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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. —

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GENERAL ELECTRIC COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of Ivan C. McLeod, Regional Director of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case, which was entered on September 8, 1966.

OPINIONS BELOW

The opinions of the court of appeals (App. A, *infra*, pp. 20–25) and of the district court (App. B, *infra*, pp. 27–67) are not yet officially reported.

JURISDICTION

The judgment of the court of appeals (App. A, *infra*, p. 26) was entered on September 8, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Section 10(j) of the National Labor Relations Act authorizes the Labor Board, upon the issuance of an unfair labor practice complaint, to bring a federal district court proceeding for "appropriate temporary relief or restraining order" pending adjudication of the complaint by the Board, and the court in such a proceeding is empowered to grant such relief as it "deems just and proper." The question presented is whether the Board is entitled to an injunction where it shows (1) that there is reasonable cause to believe the Act has been violated and (2) that the impact on the public interest will be substantial if relief is withheld.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in App. C, *infra*, pp. 68–70.

STATEMENT

On July 13, 1966, pursuant to charges filed by the International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE), the General Counsel of the National Labor Relations Board, through its Regional Director (petitioner), issued a complaint against General Electric Company alleging that the company was violating Section 8(a) (5) and (1) of the Act by refusing to recognize and meet with an IUE bargaining committee that included individuals who were members of other unions with which the company also has collective bargaining agreements

(R. 642a; 17a–24a).[1] Two days later, the Regional Director, on behalf of the Board, brought a proceeding under Section 10(j) of the Act for an injunction to restrain the allegedly unlawful conduct pending final Board adjudication of the complaint (R. 642a; 7a–16a). The United States District Court for the Southern District of New York (Frankel, J.), after an evidentiary hearing, granted the injunction sought by the Board. The Court of Appeals for the Second Circuit reversed. On September 21, 1966, Mr. Justice Harlan stayed execution of the court of appeals' judgment pending the filing of a petition for a writ of certiorari by the Regional Director and its disposition by this Court, provided the petition was filed by October 24, 1966.[2]

A. THE FACTS

General Electric Company—a major corporation engaged in the manufacture and sale of electrical, electronic, and other products, including many for the national defense and atomic energy programs (R. 643a; 330a)—has about 290,000 employees, approximately one-half of whom are unionized; they are represented by some 80 unions in about 150 bargaining units (R. 643a; 330a–331a). IUE (or its affiliated locals) is certified in 65 to 70 units, representing about 80,000 employees. Notwithstanding the individual unit certifications, the company customarily bargains for a national contract covering all IUE units (R.

[1] "R." references are to the Appendix to General Electric's brief in the court of appeals.

[2] Mr. Justice Harlan's memorandum opinion on the stay application is printed as App. D, *infra*, pp. 71–73.

643a–644a; 331a–335a). For these national negotiations, IUE elects a conference board (composed of representatives from both the international and the local unions) which in turn elects 10 or 15 members to a negotiating committee. In addition to its elected members, this committee has normally included IUE's general counsel, its research director, and other technicians, who participate in the discussion both at and away from the bargaining table but have no voting rights (R. 644a; 44a, 58a, 158a–162a).

The company's practice is to centralize and coordinate its national and local bargaining activities. This is facilitated by the fact that most of its collective bargaining agreements have the same expiration date. The company formulates proposals for presentation to unions like IUE with which it bargains nationally,[3] explains them to its local employee-relations managers, and then presents them in the national negotiations. Soon afterwards, the company's local managers present the same proposals to unions with which the company bargains only on a local basis. At about the same time, usually before the unions have responded, the company publicizes the uniform proposals to the employees. (R. 645a–646a; 69a–70a, 332a, 335a–337a, 353a–354a, 363a–366a, 378a–379a, 405a–408a.)

IUE and other unions representing General Electric employees decided that the company's bargaining

[3] In addition to IUE, the company bargains on a national basis with the United Electrical, Radio and Machine Workers, and the Pattern Makers' League (R. 643a; 334a).

strategy compelled them to adopt a coordinated approach to bargaining for the new contracts that would be negotiated in 1966. In October 1965, the president of the AFL–CIO called a meeting of unions having contracts with the company. The unions agreed to cooperate on research, education, publicity, and the evolution of national goals on wages and working conditions, and to that end formed a committee on collective bargaining and a steering committee. While it was understood that each union retained ultimate control of its own bargaining decisions, it was expected that each would consult with the others if it intended to deviate from the common goals. (R. 642a–653a; 56a–57a, 80a–81a, 132a–133a, 145a–146a, 148a–152a, 167a, 178a–180a, 187a, 193a, 199a–200a, 278a–279a, 347a–351a, 494a–496a, 646a–647a, 652a–653a.)

The current collective bargaining agreement between General Electric and IUE was due to expire on October 2, 1966. The agreement provided for negotiations for a new contract to begin in August 1966. In accordance with past practice, the parties agreed to hold "pre-negotiating" meetings in late 1965 or early 1966 (R. 653a–654a; 429a, 492a). Between November 1965 and March 1966, the union steering committee several times requested the company to discuss with the unions, jointly and informally, matters on which the company usually made uniform offers. General Electric responded that it would not engage in multi-union, company-wide bargaining (R. 653a–

658a, 424a–427a, 428a–436a, 440a–448a, 452a–453a, 456a–459a, 653a–657a). On April 13, 1966, IUE wrote the company that it would not "pursue the matter any further and will abandon any suggestions for any such joint meeting or for joint discussions" (R. 659a; 460a–462a).[4] General Electric and IUE then agreed to begin preliminary contract discussions on May 4, 1966 (R. 658a–659a; 48a–49a, 463a–464a).

In preparation for the May 4 meeting, IUE added to its own negotiating committee a representative from each of the seven other unions which, with IUE, had composed the committee on collective bargaining (*supra*, p. 5). The declared reason for including these additional members was to give IUE the benefit of their experience in negotiating with the company and to supply the inter-union communication necessary to avoid company "whipsawing" practices. As thus constituted, the committee was to bargain solely for IUE. The prior approval of the other unions was not a precondition to an IUE agreement. As in the case of the other non-elected members of the IUE negotiating committee, the seven could participate in discussions but could not vote. (R. 659a; 46a–50a, 54a–55a, 120a–122a, 133a–134a, 141a–142a, 158a, 160a–162a, 169a, 202a–203a, 205a, 235a–236a, 289a.)

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[4] Several days later, to be sure, one of IUE's local unions notified its members that the "unity resolution" was still in effect (R. 569a). This isolated statement of a single local obviously cannot be taken as an authoritative statement of IUE's policy (App. B, *infra*, pp. 38–39).

When the IUE negotiating committee arrived at the appointed meeting place on the morning of May 4, some of the seven members from other unions were wearing lapel buttons so indicating. The company's negotiating committee, learning of this before it entered the meeting room, deemed the inclusion of the seven on the IUE bargaining team a breach of faith. The company committee then proceeded to the meeting room, where its spokesman advised the IUE committee that the company would not be a party to "coalition bargaining." Each of the non-IUE union members stated that he was appearing as a member of the IUE committee and the chairman of the IUE committee and IUE's general counsel assured the company that the committee was bargaining only for IUE, but the company walked out, inviting IUE to return at 2 p.m. without anyone from other unions. Later in the morning, IUE sent a letter to the company stating that the union committee meant to bargain solely and exclusively for the IUE, insisting that the union had a "right to choose the representatives of [its] own Committee," and announcing its readiness to resume the meeting (R. 659a–661a; 50a–54a, 255a, 340a–341a). The company adhered to its position, and on May 9 the union filed the unfair labor practice charge giving rise to this litigation.[5]

[5] The company filed its own unfair labor practice charge on June 8. The General Counsel of the Board, however, found the company's charge to be without merit.

B. THE DISTRICT COURT'S DECISION

The district court found that the record did not support General Electric's contention that IUE and the seven other unions "were bent on a program of 'joint' or 'multi-union bargaining'" or that "they were 'locked in' to an understanding that none would reach an agreement with [the company] unless all did" (App. B, *infra*, pp. 55, 39). Therefore, the court found, the company's refusal to meet with the IUE could be justified only on the premise "that representatives from other unions inevitably bring the infection of unlawful or non-mandatory joint bargaining"—and it found "sound reason, and substantial precedent,"[6] for rejecting such an assumption (App. B, *infra*, p. 57).[7] The court concluded that there was reasonable cause to believe that the Board would ultimately find that the company's refusal to meet with the IUE committee on and after May 4 was unlawful under the Act (App. B, *infra*, pp. 63–64, 48). It further found that this was an appropriate case for the issuance of a temporary injunction, reasoning (App. B, *infra*, pp. 61–62):

[6] *Standard Oil Co.* v. *National Labor Relations Board*, 322 F. 2d 40 (C.A. 6); *American Radiator & Standard Sanitary Corp.*, 155 N.L.R.B. No. 69, 60 L.R.R.M. 1385 (App. B, *infra*, p. 57). In *American Radiator*, which is now pending on appeal before the Court of Appeals for the Sixth Circuit, the Board had held that a union could properly add individuals from other unions to its bargaining team.

[7] As the court pointed out (App. B, *infra*, p. 60): "The Company's walkout of May 4, taken in the best possible light, was inexcusably premature. If the IUE was ever to press for 'multi-union bargaining' or to demonstrate that it was unlawfully 'locked in,' either or both possibilities could only have materialized 'sometime down the bargaining road.' [The company's] asserted fears were never put to the test because it stopped and got off the road before the journey started."

> * * * [T]he remedy of Section 10(j) is surely appropriate and available when the impact upon the public interest is grave enough to justify swifter corrective action than the normal process of Board adjudication and court enforcement. The present case, involving a huge and basic enterprise with substantial impact upon the national defense and the economy generally, seems clearly to qualify.

The court held that it need not "balance the equities," since "Congress substantially struck the balance when it wrote Section 10(j), leaving particular implementations mainly for the Board's administrative judgment." It added, however, that, in any event, "the balance would not tip for [the company], for the equities are heavily on the side of [the Board]" (App. B, *infra,* p. 63).

The court entered an order restraining General Electric, pending Board adjudication of the complaint, from "failing or refusing to meet, confer and bargain collectively in good faith with * * * [IUE] by declining to meet with the selected representatives of the IUE * * * because of the presence of any representatives of other unions whom IUE * * * has invited to attend for the purpose of participation in the discussion and advising or consulting" (App. B, *infra,* p. 67).

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals reversed (App. A, *infra,* pp. 20–25). Without disturbing the district court's appraisal of the probable illegality of General Electric's conduct, or questioning the lower court's balanc-

ing of the equities, the court of appeals held that the case was not an appropriate one for Section 10(j) injunctive relief. It stated (App. A, *infra*, pp. 23–24):

> The Board has not demonstrated that an injunction is necessary to preserve the status quo or to prevent any irreparable harm. Moreover, the basic legal question underlying its conduct—the very same question presented in the *American Radiator* case, 155 NLRB No. 69 (1965) in which the Board did not see fit to seek an injunction—is a difficult one to resolve and one which no court has considered. It would be more in keeping with the scheme intended by Congress to have this case * * * follow the path of Board hearing and decision on the unfair labor practice charges, rather than to short-circuit the established administrative design. The Board cannot abdicate one of the prime purposes for which it was created and thus deprive the Court of the expertise which would be available to it in reviewing the Board's holding in an enforcement proceeding. * * *

The court added that the Board, instead of seeking an injunction, should have expedited its own proceeding (App. B, *infra*, pp. 24–25).

REASONS FOR GRANTING THE WRIT

Section 10(j) of the National Labor Relations Act empowers the Labor Board, when it has filed an unfair labor practice complaint, to petition a federal district court "for appropriate temporary relief or restraining order," and provides that the court shall have jurisdiction to grant such relief "as it deems

just and proper."[8] We believe, with the district court, that the Board is entitled to relief under this section upon demonstrating to the district court's satisfaction that (1) there is reasonable cause to believe that the Act has in fact been violated, and (2) the impact upon the public interest will be substantial if the relief sought is withheld. Both conditions were clearly met here. The court of appeals did not suggest otherwise. It did not disturb the district court's finding that ultimately General Electric would probably be found to have violated the Act and it did not question the gravity of the impact upon the public interest of a strike at one of the country's largest industrial firms and military suppliers—a likely consequence if relief was denied.

Rather than disagreeing with the lower court's application of the standard, the court of appeals rejected the standard itself. The court of appeals apparently believed that in a Section 10(j) action the Board must meet all of the conventional requirements demanded of an applicant for temporary relief in a private equity action—in particular, proof that the relief sought is necessary to preserve the *status*

[8] A companion provision, Section 10(*l*), requires the Board, upon finding reasonable cause to believe that a labor organization has engaged in a secondary boycott, or certain other proscribed activity, to petition a federal district court for temporary injunctive relief. Like Section 10(j), Section 10(*l*) empowers the court "to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law." The two provisions were adopted at the same time and against the same legislative background (see pp. 14–17, *infra*).

quo and to avert irreparable injury to him.[9] The issue is thus the proper standard governing relief under Section 10(j), and we submit that this issue warrants review by this Court.

1. As Mr. Justice Harlan observed in granting a stay of the court of appeals' judgment, the issue "has not heretofore been passed upon by this Court and is of continuing importance in the proper administration of the Labor Act" (App. D, *infra*, p. 73). Proceedings under Section 10(j) and its companion provision, Section 10(*l*), in which the relevant statutory language is the same (see n. 8, *supra*), are brought frequently; in the 1965 fiscal year, for example, the Board instituted 18 actions under Section 10(j) and 227 under Section 10(*l*). N.L.R.B., 30th Ann. Report, p. 214. Plainly, the Board and the courts need to know what the correct standard is.

2. The need for clarification is the more urgent because the decision of the court of appeals in the present case adopts a novel standard and thereby injects confusion in the area. Heretofore it has generally been assumed, we believe, that the proper standard is as the Board and the district court in this case conceive it. See *Douds* v. *International Longshoremen's Association*, 147 F. Supp. 103, 113 (S.D.N.Y.), affirmed, 241 F. 2d 278, 285 (C.A. 2); *Douds* v. *International Long-*

[9] Arguably, those requirements are not met here. The Board has not been irreparably harmed, for the company's refusal to bargain does not preclude the Board from entering an appropriate unfair labor practice remedy at the conclusion of its proceeding; and the *status quo* before the controversy giving rise to this litigation—negotiating *without* union representatives affiliated with other unions—was changed by the district court's injunction.

shoremen's Association, 242 F. 2d 808, 811–812 (C.A. 2); *Brown* v. *Pacific Tel. & Tel. Co.*, 218 F. 2d 542, 544–545 (C.A. 9) (concurring opinion); *Schauffler* v. *Local 1291, International Longshoremen's Association*, 188 F. Supp. 203, 211–212 (E.D. Pa.), affirmed, 292 F. 2d 182 (C.A. 3); *Brown* v. *Local No. 17, Amalgamated Lithographers*, 180 F. Supp. 294, 307–309 (N.D. Cal.); *McLeod* v. *Local 239, International Brotherhood of Teamsters*, 179 F. Supp. 481, 488–489 (E.D. N.Y.); *Douds* v. *Anheuser-Busch, Inc.*, 99 F. Supp. 474, 477 (D.N.J.); *LeBaron* v. *Los Angeles Bldg. & Constr. Trades Council*, 84 F. Supp. 629, 637 (S.D. Cal.).

3. The view of the court of appeals—that the right of the government to equitable relief is to be tested by the same criteria applicable to private equity suits—is in conflict with well settled general principles enunciated by this Court. The Court has held that the "peaceable settlement of labor controversies * * * is a matter of public concern" and that "[c]ourts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Ry.* v. *Federation*, 300 U.S. 515, 552. See, also, *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U.S. 4, 9–11; *Yakus* v. *United States*, 321 U.S. 414, 440–441. Where a government agency is empowered to seek injunctive relief, "the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief." *Hecht Co.* v. *Bowles*, 321 U.S. 321.

See, also, *Lenroot* v. *Interstate Bakeries Corp.*, 146 F. 2d 325, 327 (C.A. 8); *Federal Trade Commission* v. *Rhodes Pharmacal Co.*, 191 F. 2d 744, 747 (C.A. 7); *Securities and Exchange Commission* v. *Torr*, 87 F. 2d 446, 450 (C.A. 2); *Shafer* v. *United States*, 229 F. 2d 124, 128 (C.A. 4).

4. Finally, we submit that the view of the court of appeals is wholly inconsistent with the purpose of Section 10(j) as clearly disclosed by the legislative history. Section 10(j), like the companion section 10(*l*), was added to the Act by the Taft-Hartley amendments in recognition that the procedures of the Board were frequently too slow "adequately to protect the public welfare," and to achieve the statutory objective of "prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining." S. Rep. No. 105, 80th Cong., 1st Sess., p. 8; see, also, *id.*, p. 27. If Section 10(j) is to fulfill the congressional purpose of providing prompt interim relief against conditions incompatible with federal labor policy, its availability in cases like the present must be recognized. The company refused to bargain collectively, in apparent violation of the Act. If the unlawful conduct was not promptly enjoined, it was predictable that a major strike against "a huge and basic enterprise with substantial impact upon the national defense and the economy generally" (App. B, *infra*, p. 62) would ensue [10]—precisely the disruptive consequence that the

[10] Both IUE and company witnesses testified before the district court that, if the company persisted in its refusal to meet with the IUE Committee, a strike was likely (R. 207a, 419a–420a).

bargaining requirements of the Act are intended to prevent. The court of appeals to the contrary, we know of no way in which the Board proceedings could have been so expedited that a binding order might have been issued before August 23, when the district court issued its injunction—or, indeed, before October 2, when the then current contract was due to expire.[11]

Proceeding from the premise that Section 10(j) should be invoked sparingly in view of the history of the labor injunction and the policy of the Norris-La Guardia Act, the court of appeals concluded that an injunction was not proper here because, in the court's view, it was not necessary for preservation of the *status quo*, there was no showing of irreparable injury, the legal issue was a novel one which should be resolved in the first instance by the Board not the

[11] The Board's complaint could not have issued until an investigation of the charge filed by the union on May 9, 1966, had been completed. That investigation was completed with reasonable dispatch and the complaint was issued on July 13, 1966—and it would have been issued sooner except that the company's unfair labor practice charge against the union, which was not filed until June 8, had to be considered also; if it was well founded, the union's obviously was not. On July 15, the Board moved in the district court, and in little more than a month the district court issued its injunction. The Board's adjudicative proceeding upon the complaint could not possibly have been completed within this short period. There would have to be a hearing before a trial examiner followed by an appeal to the Board, and the Board order issued at the conclusion of that proceeding would not compel any action by the company until enforced by the court of appeals.

The Board hearing on the complaint was originally scheduled for September 19, 1966, but has been postponed at the joint request of the company and the union in order not to disrupt the bargaining negotiations currently in session pursuant to the injunction issued by the district court and the stay issued by Mr. Justice Harlan.

courts, and the Board should have expedited its own proceedings rather than seek judicial assistance. These grounds were, for the most part, expressly rejected by Congress when it adopted Sections 10(j) and 10(*l*). Opponents had argued that these provisions would revive the evils of the labor injunction and inject the federal courts into the merits of unfair labor practice cases—thereby impairing the Board's exclusive jurisdiction—and that they were unnecessary because the Board, adequately funded, could conduct administrative proceedings with sufficient expedition. S. Rep. No. 105, 80th Cong., 1st Sess., Part 2, pp. 18–19 (minority views). Congress thought otherwise. It concluded that adequate protection against abuse of the injunctive remedy was afforded by empowering only the Board, and not a private party, to seek relief;[12] and that, even when expedited, the administrative procedure prescribed by the Act—involving complaint, hearing before a trial examiner, appeal to the Board, Board decision and order, and enforcement by the court of appeals—was frequently too slow (S. Rep. No. 105, *supra,* p. 14). Most pointedly, Congress expressly rejected the model of the Norris-LaGuardia Act (29 U.S.C. 101, *et seq.*),[13] under which the stand-

[12] See 93 Cong. Rec. 4834–4847 (debate on, and rejection of, amendment which would have permitted private parties to seek injunctive relief); *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183 (C.A. 4).

[13] Section 10(h) provides: "When granting appropriate temporary relief or a restraining order * * * the jurisdiction of courts sitting in equity shall not be limited" by the Norris-LaGuardia Act. See *Building & Construction Trades Council* v. *Alpert*, 302 F. 2d 594, 596–599 (C.A. 1).

ard for injunctive relief is quite similar to that imposed by the court of appeals in this case.[14]

In short, Congress in Section 10(j) rejected the traditional standards for injunctive relief[15] and determined that the temporary injunction was an allowable and appropriate means of promptly checking unfair labor practices which were threatening to obstruct the free flow of commerce and impede the collective bargaining process.[16] Therefore, in a pro-

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[14] Under the Norris-LaGuardia Act, a temporary or permanent injunction may not be issued unless it is shown, among other things, that (1) "substantial and irreparable injury to complainant's property will follow"; (2) "as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief"; and (3) "complainant has no adequate remedy at law." 29 U.S.C. 107.

[15] In explaining the need for Sections 10(j) and 10(*l*), the Senate Report contains the statement that: "Since the Board's orders are not self-enforcing, it has sometimes been possible for persons violating the act to accomplish their unlawful objective before being placed under any legal restraint and thereby to make it impossible or not feasible to restore or preserve the status quo pending litigation." S. Rep. No. 105, *supra*, at p. 27. Read as a whole, and in the context of the other statements contained in the Report (see *supra*, p. 14), it is apparent that Congress was not suggesting that these injunctive provisions could be used only to maintain the *status quo* in a conventional sense. The statement in question merely refers to a situation where it is appropriate to preserve the existing situation, because a change appears to be unlawful. We believe the statement was not intended to apply to a situation, like that here, where the change in the *status quo* is not itself unlawful but a refusal to recognize that change may be.

[16] Under Section 10(j) (unlike Section 10(*l*)) the Board is not required to seek an injunction in every case in which it

ceeding under this section, the Board need not make the identical showing that would be required of a private litigant. To whatever extent the Board may be required to show "irreparable injury," it need show only "irreparable injury" to the public interest; such a

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finds reasonable cause to believe that an unfair labor practice has been committed. The Board has invoked Section 10(j) very selectively. An analysis of past cases indicates that consideration has been given to such factors as: "(1) the clarity of the alleged violations; (2) whether the case involves the shutdown of important business operations which, because of their special nature, would have an extraordinary impact on the public interest; (3) whether the alleged unfair labor practices involves an unusually wide geographic area, thus creating special problems of public concern; (4) whether the unfair labor practices create special remedy problems so that it would probably be impossible either to restore the *status quo*, or effectively to dissipate the consequences of the unfair labor practices through resort solely to the regular procedures provided in the Act for Board order and subsequent enforcement proceedings; (5) whether the unfair labor practices involve interference with the conduct of an election or constitute a flagrant disregard of a Board certification of a bargaining representative or other Board procedures; (6) whether the continuation of the alleged unfair labor practice will result in exceptional hardship to the charging party; (7) whether the current unfair labor practice is of a continuing or repetitious pattern; (8) whether, if violence is involved, the violence is of such a nature as to be out of control of local authorities or otherwise widespread and susceptible of control by 10(j) relief." *Administration of the Labor-Management Relations Act by the NLRB*, Hearings before the Subcommittee on National Labor Relations Board of the House Committee on Education and Labor, 87th Cong., 1st Sess., Part 2, pp. 1236–12237 (1961). The Report of that Subcommittee, far from adopting the narrow view of the court of appeals respecting the role of Section 10(j), criticized the Board for not utilizing that remedy more extensively. See Report of the Subcommittee on National Relations Board of the House Committee on Education and Labor, 87th Cong., 1st Sess. (Committee Print), pp. 50–52.

showing was plainly made here by the indication that, unless the company was enjoined, there would be a strike at one of the country's largest industrial firms, with necessarily serious disruption of the economy and adverse impact upon our defense effort. And to whatever extent the equities must be balanced, the serious injury to the public interest that would result if a strike occurs must be deemed to outweigh any possible private injury to General Electric if it is required to continue bargaining with a union negotiating committee which includes members of other unions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 1966.

APPENDIX A

United States Court of Appeals for the Second Circuit

No. 476. September Term 1965.

(Argued September 7, 1966. Dated September 8, 1966)

Docket No. 30752

IVAN C. McLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER-APPELLEE

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, INTERVENOR

v.

GENERAL ELECTRIC COMPANY, RESPONDENT-APPELLANT

Before LUMBARD, *Chief Judge,* MOORE and KAUFMAN, *Circuit Judges.*

KAUFMAN, *Circuit Judge*: The General Electric Company (GE) appeals from Judge Frankel's order granting a preliminary injunction under section 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j). The basic facts in the case are not in dispute and are set out in detail in the District Judge's opinion. —— F. Supp. —— (1966). Briefly, the General Electric Company has for years conducted separate

collective bargaining negotiations with the over eighty labor unions representing its employees. For the most part these negotiations have been held at the local plant level, although nationwide bargaining has been conducted with three unions of which the International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE) is the largest. In the past IUE has elected a General Electric Conference Board, which in turn elected a Negotiating Committee to bargain with GE. In 1965 the AFL–CIO formed a Committee on Collective Bargaining consisting of several unions which bargain with GE. The Committee's avowed purpose was to evolve a set of national goals and to adopt a "coordinated approach" to the 1966 round of collective bargaining negotiations. A Steering Committee of the Committee on Collective Bargaining was formed, and beginning in November 1965 it attempted to meet with the company to discuss various contract issues. The company consistently refused to meet with or recognize the Steering Committee. In April the IUE Negotiating Committee in a letter to GE stated that it would no longer pursue its request for joint negotiations, and suggested a meeting with the company to discuss preliminary matters concerning the negotiation of a new agreement to replace the one due to expire in October 1966. GE agreed to meet on May 4. The meeting, however, was short-lived. When GE discovered that seven men on the Negotiating Committee were affiliated with other unions represented on the Steering Committee it refused to commence contract talks and left the conference room.[1] Within a few days, both GE and the IUE filed unfair labor practice charges with the Board. Thereafter, the Regional Director of the Board issued a complaint that GE was

[1] Some of the seven were wearing lapel buttons reflecting their membership in other unions.

engaging in an unfair labor practice and also, pursuant to Section 10(j) of the Act, sought an injunction restraining the company from refusing to meet with the IUE's Negotiating Committee. After four days of hearings, Judge Frankel sitting specially to hear the case ordered a temporary injunction pending final disposition of the Board's complaint. His order, in part, restrained GE from "failing or refusing to meet, confer and bargain collectively in good faith with * * *. (IUE) * * * by declining to meet with the selected representatives of IUE * * * because of the presence of any representatives of other unions whom IUE * * * [has] invited to attend for the purpose of participating in the discussion and advising or consulting * * *."

It should be noted explicitly at the outset that with our disposition of this case today we are not passing on the basic controversy between GE and the IUE which Judge Frankel correctly characterized as "the extent of IUE's right to designate such additional, non-voting members of its Negotiating Committee—or, conversely, of the Company's right to hold such designees unacceptable or impermissible." The only issue which we decide today is the propriety of the section 10(j) temporary injunction issued against the General Electric Company.

It is the black-letter law that the issuance of an injunction is an extraordinary remedy indeed. This is especially true in the labor field where Congress by the Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes. One exception to this almost blanket prohibition was carved out by Congress in Section 10(j) of the National Labor Relations Act empowering the Board to seek in the appropriate case a temporary injunction in the district court when a complaint charging an

unfair labor practice had been issued and was pending before the Board. This section in no way changed the extraordinary nature of the injunctive remedy. Nor did it change the basic purpose of the NLRA which envisaged a system in which the Board would, in the first instance, consider and decide the issues arising under the Act and pending before it, subject to later review by the Courts of Appeals. The Board, generally, has properly restricted itself to seeking injunctions only in cases of extraordinary circumstances, exercising its power "not as a broad sword, but as a scalpel, ever mindful of the dangers inherent in conducting labor management relations by way of injunction."[2] The courts have generally issued section 10(j) injunctions only to preserve the status quo while the parties are awaiting the resolution of their basic dispute by the Board.[3]

We are not convinced that the facts in the present case reveal those special circumstances which must be present before a court will intervene and issue an injunction prior to the Board's hearing and decision. The Board has not demonstrated that an injunction is necessary to preserve the status quo or to prevent any irreparable harm. Moreover, the basic legal question underlying its conduct—the very same question presented in the *American Radiator* case, 155 NLRB

[2] Statement by Frank W. McCulloch, Chairman of the National Labor Relations Board, in an address, *the NLRB in Action*, before the Eighth Annual Joint Industrial Relations Conference, Michigan State University, April 19, 1962.

[3] See, e.g. *Fusco* v. *Kaase Baking Co.*, 205 F. Supp. 465, 477 (N.D. Ohio 1962). The legislative history of section 10(j) indicates that it was added to the Act to enable the Board to restore or preserve the status quo while it is acting upon an unfair labor practice charge. Senate Report No. 105 on S. 1126, Legislative History of the Labor Management Relations Act, 1947, vol. 1, p. 433.

No. 69 (1965) in which the Board did not see fit to seek an injunction—is a difficult one to resolve and one which no court has considered. It would be more in keeping with the scheme intended by Congress to have this case, particularly because of its unusual characteristics, follow the path of Board hearing and decision on the unfair labor practice charges, rather than to short-circuit the established administrative design. The Board cannot abdicate one of the prime purposes for which it was created and thus deprive the Court of the expertise which would be available to it in reviewing the Board's holding in an enforcement proceeding. In short, this Court's decision on the ultimate proposition of law will be better based after the Board has applied its fund of knowledge to the problems involved. Indeed, this was the Congressional plan.

Nor are we moved to affirm the grant of an injunction because the Board's procedures may be slow and tortuous. We note that Judge Frankel devoted four days to the hearing in this case and held sessions during the summer months. His scholarly opinion with footnotes exceeded fifty pages. Thus, the testimony he was required to hear and the findings of fact he was compelled to make should more appropriately have been made in the first instance by the NLRB. This Court, moreover, convened an emergency panel during its summer recess to hear the appeal. The refusal of GE to proceed with the meeting occurred on May 4 and unfair labor practice charges, as we have already indicated, were filed within a few days. The controversy we are told involved important issues of labor law, many unions, and hundreds of thousands of workers engaged in this nation's defense effort. It is difficult to imagine a case that presented more vividly the need for prompt action by the Labor

Board. For reasons that escape us, the Board decided not to utilize with dispatch its adjudicatory machinery but to proceed instead on a course at cross purposes with that envisaged by Congress in the National Labor Relations Act.

We, therefore, reverse and vacate the temporary injunction with the caveat, as noted before, that we are not passing on the merits of the controversy for we believe this can and should be done promptly by the Board in the first instance. And, our review of the Board's decision will be accelerated upon application by any of the parties.

United States Court of Appeals for the
Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighth day of September one thousand nine hundred and sixty-six.

Present: Hon. J. Edward Lumbard, *Chief Judge*, and Hon. Leonard P. Moore, Hon. Irving R. Kaufman, *Circuit Judges*.

Ivan C. McLeod, Regional Director of the Second Region of the National Labor Relations Board for and on Behalf of the National Labor Relations Board, petitioner-appellee

v.

General Electric Company, respondent-appellant

International Union of Electrical, Radio and Machine Workers, AFL-CIO, CLC, intervenor

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed and that the temporary injunction be and it hereby is vacated in accordance with the opinion of this court.

(S) A. Daniel Fusaro,
Clerk.

APPENDIX B

United States District Court, Southern District of New York

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

AGAINST

GENERAL ELECTRIC COMPANY, RESPONDENT

OPINION 66 CIV. 2155 (AUGUST 18, 1966)

FRANKEL, D. J.

On May 9, 1966, the International Union of Electrical Radio and Machine Workers, AFL–CIO (IUE) filed with the National Labor Relations Board a charge alleging that respondent, General Electric Company, had violated Sections 7, 8(a)(1), and 8(a)(5) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 157, 158 (a)(1), and 158 (a)(5), by refusing, on and after May 4, 1966, to recognize, meet, and bargain with an IUE bargaining committee. On July 13, 1966, the Board's General Counsel, through Regional Director McLeod, petitioner herein, issued a complaint and notice of hear-

ing on the charge. Two days later, by order to show cause, the Regional Director, for the Board, petitioned under Section 10(j) of the Act, 29 U.S.C. § 160(j), for a temporary injunction restraining the allegedly unlawful conduct. An evidentiary hearing was conducted through the week beginning July 25, 1966. Now, upon the record thus made, and instructed by the able briefs and oral presentations of counsel,[1] the court reaches the following findings and conclusions.

I.

The respondent is a New York corporation engaged in the manufacture, sale, and distribution of electrical and electronic equipment, chemicals, plastics and other things, including a variety of products for the national defense and atomic energy programs. It has some 290,000 employees, over 60 plants spread through 30 states, and more than 400 other installations (service establishments, warehouses, etc.), so that its physical properties and operations reach into every State in the Union. Approximately half its employees are unionized, and there is a total of about 150

[1] The charging union appeared by counsel, not strictly as a "party," and was permitted to examine and cross-examine the witnesses for both sides as well as to make legal submissions. The Chamber of Commerce of the United States and the National Association of Manufacturers of the United States joined in, and were granted leave to file, a brief as *amici curiae* supporting the respondent. A motion was filed by the National Electrical Manufacturers Association seeking to have its name added to that brief. The motion, which offered no enlightenment except to say this Association was deeply interested in the outcome and had nothing to add to what the *amicus* brief on file already said, was denied. The court is not assisted by such incomplete polls showing the weight of numbers, apart from reason, on one side or the other of a controversy. Cf. Wiener, *Briefing and Arguing Federal Appeals* 269 ff. (1961).

bargaining units. Overall, the Company deals with more than 80 labor unions.

For the most part, respondent bargains, at least formally, in separate negotiations for each bargaining unit. The three exceptions to this pattern are the IUE, the United Electrical, Radio and Machine Workers (UE), and the Pattern Makers' League. With these three Internationals, the practice has been to negotiate national agreements, supplemented by local unit agreements to encompass particular local conditions and problems.

The IUE represents about 80,000 of respondent's employees in some 65 to 70 bargaining units. In a substantial portion of these units, the International Union as such is the certified representative. In others an IUE local is certified. Notwithstanding the individual unit certifications, and the differing designations of the International or a local as representative, the practice as noted above, has been to conduct national bargaining for a national agreement covering all IUE units, supplemented by local agreements. The local agreements are designed as additions to, not variations from, the national contracts, which cover such basic matters as wages, hours, seniority, and arbitration procedures.

For these national negotiations, the IUE elects a General Electric Conference Board, comprised of representatives from both the International and local unions. The Conference Board in turn elects some 10 to 15 or more members to a Negotiating Committee, which meets at the bargaining table with a group designated by the Company.[2] In addition to these elected members, the Negotiating Committee has nor-

[2] Between contract negotiations, the Negotiating Committee meets with company representatives on grievances and other problems arising under the contract.

mally included people like the Union's general counsel, publicity workers, the research director, and other technicians. These additional members participate in discussions at the bargaining table and in the Negotiating Committee's internal councils, but they have no voting rights, which are reserved to the elected members. As will appear below, the nub of the present controversy is the extent of IUE's right to designate such additional, non-voting members of its Negotiating Committee—or, conversely, of the Company's right to hold such designees unacceptable or impermissible.

To complete briefly the procedural outlines on the Union's side: the Negotiating Committee is required to report on the progress of bargaining to the Conference Board. From time to time there are minority as well as majority reports. The Conference Board determines the Union's position on any given question, including ultimately whether a proposed national agreement should be signed.

In recent years the Company has developed a fairly uniform course for handling and coordinating its national and local bargaining activities. As described by its Labor Relations Counsel, the practice is to formulate a set of national company proposals for presentation to the IUE and the UE, two of the three unions with which there is bargaining on a national scale. Before these proposals are presented to the unions, the Company's employee relations managers are called to the New York main office, where copies are given and explained to them. The Company then presents the proposals to the IUE and UE. Normally within a day or two thereafter (in one instance, at the IUE's request, there was a five-day delay), upon instructions from the New York headquarters, the same proposals are given by the local managers to

the local representatives around the country of all the varying unions with which the Company deals on a so-called local basis—e.g., locals of the International Brotherhood of Electrical Workers (IBEW), International Association of Machinists (IAM), Sheet Metal Workers (SMU), and others. At the same time, and commonly before the unions have announced their acceptance or rejection, the uniform set of proposals is publicized to the Company's employees. This mode of centralized administration, despite the multiplicity of bargaining units and representatives, is rendered feasible in part because the Company's collective agreements, with an insignificant number of exceptions, have uniform expiration dates.

Testimony for the Company indicates that its local managers have some small measure of discretion for handling local problems by means of particularized local provisions. The discretion ends, however, at the point where questions deviate from the routine. At this point, the local managers are expected to seek advice, and evidently consent, from the New York office. Whatever the precise internal definition of these managerial powers may be, the ultimate fact is that all of the Company's offers to the many unions turn out to be substantially uniform in their basic provisions. And the substantial uniformity appears to extend to the agreements eventually concluded.

For some years before the events giving rise to this proceeding, the IUE and other unions representing respondent's employees were growing increasingly restive and self-critical over the results of their separate, mutually isolated efforts to cope with the Company's centralized bargaining strategy. They found themselves outmaneuvered repeatedly when the Company announced that one or more unions had accepted a proposal and used this as leverage to

wrest agreement from a more obstinate representative. They believed (although it is unnecessary for present purposes to decide whether they were right) that the Company's technique had tended to divide and conquer them; so that the terms and conditions of employment for General Electric employees had fallen behind others in comparable industries. They concluded that a program of mutually agreed "national goals" was needed to meet the Company's offering of identical national proposals. It was thought moreover, that there should be a means and a program for communication between the interested unions, mutual research assistance, coordinated publicity—in short, a substantial measure of "unity" and joint bargaining.

Acting on such views, the AFL–CIO, through its President, George Meany, called a meeting in October 1965 of a group of presidents or other representatives of international unions which (or locals of which) had bargaining relationships with respondent. Christened the Committee on Collective Bargaining, the group at its initial meeting contained officials of the IUE, IBEW, IAM, United Automobile Workers (UAW), Allied Industrial Workers (AIW), and American Federation of Technical Engineers (AFTE).[3] It was determined at the meeting that there should be a "coordinated approach" to the forthcoming 1966 negotiations with respondent. A Steering Committee was named, with responsibility for implementing the initial policy determinations, and the structure of some other committees was outlined. It was agreed that there should be a cooperative program of research, education, and publicity,

[3] The Committee was later enlarged to include the Sheet Metal Workers (SMU) and the American Flint Glass Workers (AFGW).

and an effort to evolve a set of "national goals" on wages and other working conditions. It was understood that each individual union, within its own constitutional framework, would control its own bargaining and retain the autonomous power to decide what agreements it might make with respondent. It was also understood, however, at least tacitly, that there would be consultation and an exchange of views if and when any union in the group decided to abandon or deviate from any "national goals" that might result from the inter-union deliberations.

Following the formation of the Committee on Collective Bargaining, and mainly under the leadership of its Steering Committee, a number of steps were taken to implement the "coordinated approach" to bargain with respondent. At the AFL–CIO convention in December 1965, a resolution was adopted reciting that the unions represented on the Committee had "joined together to form a common collective bargaining front for the negotiations * * * in 1966" with respondent and Westinghouse Electric Corporation. The group, the resolution continued, "plan to develop national goals which they will jointly support and prevent the corporations from playing one off against the other." Reciting the view that respondent (and Westinghouse) had lagged behind other major industries in granting employee benefits, the resolution said:

> The seven unions have expressed their determination, through an insistence upon genuine collective bargaining, to not only secure action in 1966 on pension and insurance problems, but also to assure their membership the benefits of the breakthroughs being made in recent labor-management agreements on other contractual matters.
>
> Experience has shown that in industries in which a number of unions operate, such coordi-

> nation of collective bargaining is the only way large corporations can be made to face up to their responsibilities. * * *
>
> * * * Therefore, be it
>
> "Resolved: We pledge the full support and resources of the AFL–CIO to the efforts of the Committee on Collective Bargaining, representing the seven unions, to secure justice for their membership in these negotiations, and call upon all affiliated unions to join us in this pledge.

Speaking in support of that resolution, IUE President Paul Jennings said:

> As these corporations grow larger and more diversified, it becomes more and more difficult for individual international unions to deal effectively with the corporation's technique of attempting to settle with one union, and then come to the others with an accomplished fact. What we have done, therefore, is recognize the basic fact that we have the responsibility to deal with each other as autonomous unions.

On March 15, 1966, the cooperating unions, now totalling eight, published a document entitled "Program for Progress." On its cover it bore a symbol consisting of a circle of links connecting boxes showing the initials by which the eight internationals are known. Within the circle appeared the legend: "We unite for a greater measure of justice." The text of the paper was preceded by a heading announcing "Joint Union Collective Bargaining Demands for GE-Westinghouse 1966 Negotiations," further characterized by a subheading that said: "National goals adopted by over 300 delegates from the 8 International Unions at the Conference on National Collective Bargaining Goals in Washington, D.C. on March 15, 1966." The document then proceeded to

list, and later to elaborate upon, a series of three "economic issues"[4] and six "non-economic contract

[4] "I. Wages

"A. A substantial wage increase to catch up on past wage short-fall, plus an annual improvement factor based on increased productivity and output.

"B. A planned program to end geographical differentials for the same type of work.

"C. A cost of living escalator providing for one percent of wages for each one percent increase in the cost of living.

"II. Holidays and Vacations

"A. Nine paid holidays—double time for holiday work, plus the holiday pay.

"B. A progression schedule on vacations for hourly employees that would provide for a graduated vacation between 1 and 5 years' service, between 5 and 10 years' service, and between 10 and 20 years' service. A proportionate increase in paid vacation benefits for salaried employees.

"C. A vacation bonus of 25 percent of wages.

"III. Income and Employment Security

"A. The SUB (Supplementary Unemployment Benefit) type of layoff benefit plan.

"B. Restrictions on overtime where people are on layoff; double time for all overtime hours.

"C. No contracting out of work historically performed by employees in the bargaining unit when skills, manpower and facilities are available.

"D. The right to move with the job; employees shall have preference over new hires in plants to which their jobs have been moved, or where there is a build-up of operations and a curtailment of job opportunities in the home plant. A reasonable moving expense shall be paid.

"E. A joint labor-management program shall be developed leading to a progressive shortening of the work week and work year.

"F. Provision for 6 days paid sick leave per year for hourly employees. Proportionate increase in paid leave for salaried employees."

clauses"[5] the unions proposed to press in the forthcoming negotiations. The paper concluded with a "Resolution on Unity" which said, *inter alia:*

> It is now time for us to convey the details of this program to the membership of our local unions. At the same time we must communicate with the public in a manner which will create sympathetic understanding of our program and of our objectives. * * *
>
> We have developed a sound basis for coordinated negotiations as the result of the spirit of mutual respect and confidence which has been developed to new levels during recent months. * * *
>
> While we come together as representatives of eight different unions accustomed to negotiat-

[5] "I. A full arbitration clause with no restrictions.

"II. The full union shop.

"III. Automation provisions which would provide for:

"A. Program of retraining of employees to prepare them for new skills that will be needed by changing technology.

"B. Rate retention and/or increases when jobs have become automated.

"C. The maintenance of the bargaining unit against erosion under automation.

"D. Maintenance of job security by some form of attrition clause.

"IV. Continuity of Service. A minimum of two years and time-for-time above two years' service for periods of layoff.

"V. Anti-Discrimination Clause.

"'The Company agrees that it will not discriminate against any applicant for employment, or any of the employees, in payment of equal wages, assignment to jobs, seniority, promotions, training, transfer, layoff, discipline, discharge, or any other term or condition of employment, because of race, color, religion, marital status, sex, age, or national origin.'

"VI. Pension and Insurance Program.

"Details to be found in the Pension & Insurance Fact Sheets."

ing with the GE and Westinghouse Corporations on a union by union basis, the companies' representatives have dealt with us and will continue to attempt to deal with us, either locally or nationally, under a centrally controlled program. The fact is that even though the companies have opposed company-wide bargaining on any issue they have, in fact, insisted upon the implementation of company-wide policies during contract negotiations.

By the action we have taken here today we intend to confront company-wide policies with a union-wide program.

Our members will know and the companies will know that all bargining units will be directing their energies toward the same national goals.

Of course, in addition, each union will have an opportunity to pursue additional goals necessary to meeting its own problems. * * *

In the light of these simple and commonsense principles, it is a matter of deep regret, that at least twice in recent weeks, General Electric officials have launched bitter, yet totally unfounded, attacks upon our efforts. They accuse us of wanting to carry on meetings with the company "in secrecy" and of wanting to take away the rights of bargaining units to carry on their negotiations; the company charges that our activities will lead to "industry-wide barganing" with "strikes and unsound settlements" and "economic strangulation," which, of course, is not true. * * *

Not only do we reject this obvious attempt to confuse and divide us, but we pledge to each other our mutual cooperation, our mutual understanding and our mutual support.

At the meeting in which the foregoing Program and Resolution were adopted, IUE President Jennings observed that the cooperative effort gave the lie to those who had deemed such a thing inconceivable be-

cause of inter-union jealousies, rivalries, suspicion, and mistrust. He rejected as misleading propaganda the management view that the joint effort would impair the power of individual unions to bargain for themselves. He said: "What concerns these corporations, is that each group as it bargains will have the confidence that all other bargaining groups are going to be asking for the same national goals."

Implementing the decision to publicize the joint program and educate the memberships of the several unions, the Committee on Collective Bargaining created a publication called "Unity," the first issue of which (dated March 1966) announced that it would "be distributed to all GE and Westinghouse workers from time to time during the eight-union drive." To the same end, a series of so-called "grass roots meetings" was scheduled and held for the companies' workers in various places around the country, with one or another of the cooperating unions acting as "host" on each occasion.

In the course of these collaborative efforts, people identified with IUE said, or were quoted as saying, on two or three occasions that there was an intention under the unity program "for no one to sign a contract with General Electric until all parties sign." The quoted words are from a one-page mimeographed "flyer" distributed by IUE Local 320 (Syracuse, N.Y.), and produced in evidence by respondent from the full dossier it keeps of such documents. A newspaper reporter for a Fort Wayne, Indiana, newspaper, called as a witness by respondent, quoted a similar statement of March 3, 1966, attributed to John Callahan, Chairman of the IUE's General Electric Conference Board and Negotiating Committee. Although it filed such statements, and later gave them in evidence here, respondent never mentioned them to

anyone in IUE responsible for negotiations, deeming it a waste of time to make any direct inquiry into the Union's position.

Despite the foregoing statements, it seems clear, and I find, that there was never any agreement, express or implied, among the cooperating unions that none would sign with respondent unless all signed. It was tacitly understood that before any of them varied or abandoned any of the agreed "national goals," they would inform and consult with each other. The cooperative arrangements were instinct with the objective of approaching, as nearly as possible, the kind of unitary stance respondent regularly took vis-a-vis the several unions. But each union retained the "autonomous" status affirmed in the AFL–CIO resolution of December 1965, so that each was free at all times to sign with respondent on terms it deemed acceptable for its members. Moreover, as will appear later, this question whether the cooperating unions were "locked in," though extensively canvassed in the hearing and briefs, turns out in the end to be essentially irrelevant to the issue before us.

We come, finally, to the events directly generating this proceeding. As the evidence unfolds, the story may start with a telegram of November 16, 1965, from the (then) seven-union Steering Committee to respondent's Philip D. Moore, raising pension and Social Security issues with the substance of which we are not concerned. In a wired response the next day, after stating the Company's position, Mr. Moore said:

> We note that your telegram listed the names of several representatives of other unions. However, this telegram is addressed to you as a representative of the IUE since we do not bargain with their unions at the national level. We assume, of course, that these gentlemen will

> continue to be in touch with their respective local union officials who in turn are always free to discuss appropriate matters covered by their local contracts with local managements.

On November 24, 1965, Mr. Moore confirmed in a letter to Mr. Callahan a proposal respondent had made for the creation of subcommittees to explore preliminarily the subjects of grievance procedure, contract language, and employment security, beginning in December 1965, as groundwork for the negotiations formally scheduled to begin in August 1966.[6] Answering for IUE on December 21, Mr. Callahan objected to some of the substantive and procedural thoughts Mr. Moore had expressed, and made some counterproposals for the subcommittee procedure. Mr. Moore treated of these views in another letter dated January 20, 1966. In answer to this, on February 7, 1966, the Committee on Collective Bargaining wrote to Mr. Moore, observed that the subcommittee problem had been "the subject of considerable discussion" between the Company and the several unions, and said:

> Since the matter is common to the eight AFL–CIO unions which are joined together in

[6] Since the collective agreement freed both parties from any enforceable obligation to bargain until a date no earlier than mid-August 1966, there was a potential threshold issue for the case at bar whether there could be a basis for charging respondent with a refusal to bargain as early as May. The Company, in what seems an eminently sound and statesmanlike view of the matter, recognized that the central problem in the case would remain no less real and unresolved if it were put off until August or later, so that the only real result would be to heighten the atmosphere of crisis in which an adjudication was had. Accordingly, without waiving any contract or other rights for any other purpose, respondent has agreed that there is no contention in this case that the Union's demand for bargaining is premature.

> preparation for these negotiations, and we have given it considerable thought, we are offering you our joint thinking.

After outlining the promised "joint thinking," this letter said:

> Since our eight unions have a jointly developed approach on how to create the most successful type of meetings, and since your management has a national policy on this matter, the simplest and most effective solution is a conference between us.

On February 15, the Steering Committee wrote again to Mr. Moore, this time on one of the Social Security problems mentioned earlier herein. Among other things, the Committee wrote in this letter:

> Since your offer to each of the unions is the same and we have considered this matter jointly, we believe it would be to the best advantage to all considered that we have a joint meeting in order to discuss your proposals.

On February 24, Mr. Moore wrote three letters in evidence here. The first, to Joseph Swire, IUE's Pension and Benefit Consultant, referring to claimed misconceptions in the Steering Committee's February 15 letter, said:

> It would be most inappropriate for us to respond to the Steering Committee as they requested in their recent letter since this would only serve to create an illusion that national negotiations on benefits are now in process and that locally negotiated contract agreements are subject to alteration at the national level.
>
> You can help to clarify this matter by advising your associates in the other unions that no arrangements have been made between IUE and General Electric which would require or facilitate multi-union negotiations or discussions in that direction.

Mr. Moore's second letter, to David Lasser, Assistant to the President of IUE and chairman of the Steering Committee, protested the proposed "coalition" approach by the unions, observing, *inter alia:*

> * * * It now appears that [there] * * * is a bid for General Electric to recognize this group as a merged negotiating body. Apparently this new group is seeking to take over negotiations that historically have been carried on by the IUE here in New York, and independently by the seven other unions at the Company locations where they are certified.
>
> We realize that it is not our place to advise you and your associates on internal union affairs and that arrangements for coalitions and mergers for negotiations purposes have been publicized before as indications of intra-union cooperation. We also realize that the officials of the unions involved may actually have some organizational authority to give up their independence at the bargaining table for tactical reasons.
>
> We are not responding to your Steering Committee's two recent letters because by doing so it might create the mistaken impression that national bargaining with local bargaining units is in effect; this is clearly not the case nor do we believe it should be. * * *

The letter went on to portray the dangers and defects of "industry-wide bargaining," expressed fears of "experimenting with techniques that go in the direction of unnecessary strikes and unsound settlements," and concluded that such evils could "be the long-term hazard of any coalition in our industry."

Mr. Moore's third letter of February 24 was to Mr. Callahan, congratulating him on his re-election as Chairman of the Conference Board, urging that the parties move forward on the subcommittee problem, and enclosing a copy of the preceding letter to Mr.

Lasser. Repeating his objections to "coalition bargaining," Mr. Moore wrote in this letter "* * * I want to assure you now that there is no likelihood that we will obstruct negotiations with your union nationally or with the other seven unions locally (where they are certified to negotiate) by engaging in coalition bargaining."

In a reply of March 10, 1966, among other points of disagreement, Mr. Callahan chided Mr. Moore for "choos[ing] to ignore the suggestions of the eight unions completely and, instead, propos[ing] that [the parties] start subcommittee meetings on [respondent's] unilaterally determined basis."

On March 23, 1966, the eight-union Committee pressed its efforts toward joint sessions in a telegram to respondent's President, Fred J. Borch, reiterating such points as the following:

> The contracts of our eight unions with GE on the major issues considered by the [Union] Conference are the same and we naturally have developed a common program to improve our agreements. * * *
>
> In order to canvass this whole problem [of a peaceful settlement] facing us jointly as an attempt to lay the groundwork for such collective bargaining, we propose an early meeting with you and your representatives.
>
> Such a meeting would be informal and would involve no commitments as to future action by either group.

Mr. Borch telegraphed a rejection of this proposal on March 25. On the same day, Mr. Moore wrote again to Mr. Callahan, enclosing a copy of the Borch wire, referring to his letter of March 22 on the subcommittee problem, and repeating that the Company remained "receptive to appropriate pre-negotiation discussions with IUE, but * * *[did] not intend to

participate in any eight-union coalition discussions or in any other steps in the direction of industry-wide bargaining."

In his reply to Mr. Moore dated April 13, 1966, Mr. Callahan announced a significant change of position. He said the Committee on Collective Bargaining and IUE's membership "were truly disappointed that the officials of General Electric did not find it possible to accept the request of the eight union presidents for an informal meeting" to discuss a joint approach. "However," he continued,

> it is clear that General Electric is not willing to hold any such joint meeting, even though it may be informal. The IUE did not intend by its telegram any formal request for joint negotiations. Speaking for the IUE–GE Conference Board, we will not pursue that matter any further and will abandon any suggestions for any such joint meeting or for joint discussions.

He went on to discuss still outstanding differences concerning the proposed subcommittee procedure, then said:

> * * * We believe the only way to satisfactorily deal with all of these problems and attempt to resolve them is by a meeting between your representatives and our Negotiating Committee. The IUE–GE Negotiating Committee therefore request that your Company meet with it to discuss all of the problems I have mentioned, including the agenda of subject matters for, the number of and the scheduling of, the proposed sub-committee meetings.

Replying on April 20, Mr. Moore expressed his satisfaction with the foregoing statement of IUE's position. He suggested, and it was soon agreed, that the committee for the Company and the IUE should meet at 10 a.m. on May 4 "in the usual Conference Room" at the Company's offices.

In preparation for that meeting, as stated in an IUE statement prepared for delivery to respondent, the Union added to its Negotiating Committee, as non-voting members, one representative from each of the other seven unions that had comprised, with IUE, the Committee on Collective Bargaining. The seven were needed, it was thought, to give the benefit of their experience in negotiating with respondent, and to supply adequate inter-union communication as a means of avoiding the "whipsawing" respondent was thought to have accomplished in the past. It was not intended by adding these members to bargain for any unions other than IUE. Nor did the additions reflect any understanding that a proposed agreement between IUE and respondent would be subject to approval or disapproval by any other union.

The IUE Negotiating Committee, with the seven men from other unions, arrived at the appointed meeting place at about 9:45 a.m. on May 4. Some of the seven were wearing lapel buttons reflecting their membership in other unions. A member of respondent's staff, observing this, hastened to report it to Mr. Moore, who made it the subject of a speedy discussion of strategy with his committee. Respondent's committee concluded that the inclusion of the seven in the group ostensibly appearing for IUE was a breach of faith, or, at the least, an attempt to use and apply the Labor Board's recent decision in *American Radiator & Standard Sanitary Corporation,* 155 N.L.R.B. No. 69 (November 1965), which upheld the propriety of such additions to a union negotiating team. Advised by its counsel that the Board's *American Radiator* decision should be deemed unsound, and that it should not be followed, respondent's committee concluded that it would not meet with the IUE group while it included the seven "outsiders." It was de-

cided that the Company's group would repair to the conference room, that Mr. Moore would state the position, and that they would then depart without tarrying.

The plan was executed. Mr. Moore and his colleagues went to the conference room, filed around the table, and greeted those who had arrived earlier. With all, or substantially all, of the unwanted seven, there was a brief, approximately uniform conversation. As Mr. Moore and each of them exchanged introductions, he said: "I see you're from [naming a union other than IUE]." To which each replied that he was appearing this day as a member of the IUE Committee.

Following the tour of the table, the Company's people took seats on their side. Mr. Callahan said he had a statement to make. Mr. Moore said he had one to make first, and he proceeded to do so. He said he "must have come to the wrong meeting;" that he would not be a party to "coalition bargaining;" that he deemed the meeting recessed at 2 p.m., at which time those on the other side were invited to return "with an IUE Committee," excluding people from other unions. Mr. Callahan and IUE's general counsel requested an opportunity to explain, putting their requests more shrilly as the Company's people prepared to leave. They managed to shout that their group was intended to be "an IUE Committee," but no more than that before Mr. Moore and his colleagues swept from the room. The whole episode took about ten minutes.

Later in the morning, Mr. Callahan delivered to Mr. Moore, at the latter's office, a letter composed after the brief conference room encounter. The letter said the Union was "shocked at [Mr. Moore's] refusal to meet the IUE-Negotiating Committee and * * *

intemperate and arbitrary refusal to permit the Committee to respond to [Mr. Moore's] false enunciation of the purpose of [the] Committee." It announced IUE's readiness to resume the meeting at 2 p.m., but insisted that the Union had a "right to choose the representatives of [its] own Committee," and rejected any suggestion that the Company could "designate the composition" of the Committee.

The parties have adhered to their positions. On June 8, 1966, the Company filed with the Labor Board a charge accusing IUE, the Committee on Collective Bargaining, and the other unions in that Committee of violating Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(A) by, *inter alia,* engaging "in an illegal concerted, collusive effort to force GE to recognize and bargain with CCB as the representative of the aggregate of employees represented by the eight named labor organizations;" entering "into an illegal contractual arrangement under which each will be precluded from entering into a collective bargaining agreement with General Electric Company unless and until all the unions have agreed to enter into such agreement;" and thus restraining and coercing respondent's employees in the exercise of their right under Section 7 of the Act, 29 U.S.C. § 157, "to bargain through representatives of their own choosing * * *." On July 13, 1966, petitioner wrote respondent and announced his view that there was no basis in the evidence for issuance of a complaint on this charge. Respondent has obtained an extension of time to appeal this ruling to the Board's General Counsel.

As noted much earlier, the IUE, on May 9, 1966, had filed the charge leading to the complaint and the Board's decision to bring the present proceeding for injunctive relief.

II

The ultimate legal issue in the case is this: Taking account of all background events and exchanges, has the Company been justified, since May 4, 1966, in refusing to meet with the group tendering itself as the "IUE Negotiating Committee" on the single stated ground that the group included seven non-voting members who normally represent other unions comprising (with IUE) the Committee on Collective Bargaining? I conclude that the Company has not been justified; that there is compelling ground to expect eventual findings by the Board establishing the alleged unfair labor practices; and that the relief petitioner seeks is just and proper. The bases for these conclusions—composed primarily of reasons for rejecting respondent's defensive theories—are as follows:

First, a preliminary issue: concerning respondent's proposal to investigate the Board and the Regional Director

At the outset of the injunction proceeding, respondent served a subpoena duces tecum upon petitioner seeking statements obtained by Board investigators, internal Board memoranda, "and all documents considered by the Board members in their agenda meeting at which authorization allegedly was granted" to bring this action. Upon argument of a motion to quash, respondent's counsel undertook to explain the purpose of the subpoena by stating, first, that there was "reason to believe that the decision by the Labor Board to instruct the Regional Director to bring this proceeding was made by a divided board, split, we believe, 3 to 2." Exploration of this belief about a non-public, unreported vote would help demonstrate, it was argued, that the case is a close one, and there-

fore unsuitable for injunctive relief under Section 10(j). In addition, counsel said, the papers sought from the Board's files might show gaps in petitioner's investigation of the matter, and thus go to whether institution of this proceeding was without "reasonable cause."

The motion to quash was granted. There is no justification for, and powerful authority against, the proposed exploration into the processes by which the Board, as a Board, reached the determination on which it acted. See *United States* v. *Morgan*, 313 U.S. 409, 421–422 (1941); *Madden* v. *International Hod Carriers' Union*, 277 F. 2d 688, 693–694 (7th Cir.), *cert. denied*, 364 U.S. 863 (1960); *Douds* v. *Wine, Liquor and Distillery Workers Union*, 75 F. Supp. 184, 186 (S.D.N.Y. 1947). But cf. *Sperandeo* v. *Milk Drivers Union*, 334 F. 2d 381 (10th Cir. 1964); *Madden* v. *Milk Wagon Drivers Union*, 229 F. Supp. 490 (N.D. Ill. 1964). Assuming for argument's sake, as I did in quashing the subpoena, that there was dissent within the Board, the court is not authorized to investigate and weigh that in appraising the case. Similarly, it could not comport with the respect owed to the "integrity of the administrative process" (*United States* v. *Morgan, supra*, at 422) to allow a trial of the regional director's performance of his investigative duties before proceeding to the trial that official has been authorized and instructed to seek against respondent. In any event, "the adequacy of the investigation is judicially tested only by the Board's subsequent ability to sustain its initial determination that the investigation disclosed reasonable cause to believe that a violation occurred." *Madden* v. *International Hod Carriers', Etc., Union, supra*, at 693. That test, as should become apparent from what is said herein, has been amply met.

Second, respondent's asserted justification for refusing to meet with the Negotiating Committee tendered by the IUE

Since respondent's group literally walked out and refused to talk with the IUE Committee, the case in its substantive aspect starts with what appears on its face to be the boldest and most explicit form of refusal to bargain. The problem, then, as the parties have joined in presenting and contesting it, is whether respondent has been, and is now, justified in its steadfast refusal to meet while the IUE committee includes seven individuals whose usual identification is with other unions that deal in other units with respondent. To put the claimed justification in its own words: "Respondent contends that the charging union's pretended renunciation of its drive for joint bargaining is sham, and that its claimed reserved right of independent action is the emptiest formality."[7] Further, respondent says, in light of what had gone on before,

> the charging union had no right, over the Company's objection, to introduce into the bargaining with the Company, and insist upon the presence thereat of men who—however denominated by IUE—were in fact representatives of other unions. For in doing so, IUE (a) injected into the IUE–GE negotiations the potential of conflict among unions should their individual interests, as the bargaining proceeded, differ from their announced common goals, and thereby (b) exceeded the limits imposed by law on the selection of its bargaining representatives.[8]

In some of respondent's other words, "if IUE never truly cast off the taint of illegality which marked its efforts at joint bargaining, respondent was not under

[7] Respondent's Post Hearing Brief, p. 2.
[8] *Ibid.*

a duty to bargain with its expanded committee on May 4th."[9]

In resolving the controversy generated by these contentions, it has seemed helpful, first, to recall the principles that circumscribe the rights of either negotiating party to set qualifications for the other's representatives; then, to identify and consider the "taint of illegality" which is said to have triggered respondent's withdrawal from the May 4th meeting; and, on this basis, to determine the validity of the claimed justification for this action.

1. Section 7 of the Labor Act, 29 U.S.C. § 157, guarantees employees the right "to bargain collectively through representatives of their own choosing * * *." Section 8(b)(1)(B), 29 U.S.C. § 158(b)(1)(B), protects employers against restraint and coercion by unions in selecting "representatives for the purposes of collective bargaining * * *." Although there are some differences between the two protections, *N.L.R.B.* v. *Local 294, Internat'l Br. of Teamsters, Etc.*, 284 F. 2d 893, 896 (2d Cir. 1960), their substantially identical core, pertinent to our problem, is a broad assurance that neither side may select or veto the persons or agents to be employed by the other for negotiations. *Ibid.*; *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40, 44 (6th Cir. 1963); *N.L.R.B.* v. *Roscoe Skipper, Inc.*, 213 F. 2d 793 (5th Cir. 1954).

Like most rules, this one "is not absolute or immutable." *N.L.R.B.* v. *International Ladies' Garment Wkrs.' Union*, 274 F. 2d 376, 378 (3d Cir. 1960). It has on rare occasions been the subject of narrow exceptions. So, for example, employers have been sustained in refusing to meet with unions whose ownership of, or investment in, competing businesses posed

[9] *Id.*, p. 6.

a "conflict between investment protection and worker representation motives * * *." *N.L.R.B. v. David Buttrick Company*, 361 F. 2d 300, 305 (1st Cir. 1966); see also *Bausch & Lomb Optical Company*, 108 N.L.R.B. 1555 (1954).[10] Similarly, a union has been held free to refuse to sit down with a company representative recently departed from the union's camp, bearing "years of familiarity from the inside of the union with its strategy, thinking, working, and operations," and introduced "tauntingly and laughingly" by management to show it had "put one over on the union * * *." *N.L.R.B.* v. *International Ladies' Garment Wkrs.' Union, supra*, 274 F. 2d at 379. And an employer has been upheld in refusing to meet with a particular individual whose "expressed hostility to the [employer] and * * * purpose to destroy the [employer] financially made any attempt at good faith collective bargaining a futility." *N.L.R.B.* v. *Kentucky Utilities Co.*, 182 F. 2d 810, 813 (6th Cir. 1950).

In the handful of such extreme and unusual cases—especially the couple involving objections to individual negotiators—the proposed representatives were held to be so patently obnoxious or tainted by conflict that their very presence at the table belied any "good faith offer to bargain * * *. *N.L.R.B.* v. *Local 294, supra*, 284 F. 2d at 896.

The analogy respondent attempts between such cases and this one is not impressive. By way of a preliminary, shorthand rejection of the analogy, we note an interesting point of advocacy and the use of precedent. Respondent relies at some length on the 1950 opinion of the Sixth Circuit in *N.L.R.B.* v. *Kentucky Utilities Co., supra*, a quaint and scarcely semi-

[10] While the cited cases involved employer objections to *unions* rather than particular individuals, their principle seems to warrant respondent's invocation, and our mention, of them.

nal case where the union had apparently agreed that its proffered negotiator was understandably repulsive to the company and should not appropriately have been placed at the bargaining table. See 182 F. 2d at 814. On the other hand, respondent's 88-page post-hearing memorandum does not mention once the same Circuit's 1963 holding in *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40, which rejected an employer position indistinguishable in principle from the one pressed here, and which is accordingly invoked by petitioner and the charging union as a closely apposite precedent.[11] In the end, the decision in the case at bar closely follows the rationale of that one. Nevertheless, the court has considered, and it seems appropriate to treat with, the details of respondent's arguments for a different result.

2. Respondent considers at length the Committee on Collective Bargaining, its program and symbols of "unity," its agreement on "National goals"—its status, under respondent's favored label, as a "coalition." It is helpful to isolate the particulars in all this which are said to have left the "taint of illegality" respondent claims as the source of its absolution from the duty to bargain with the IUE Committee. For many of the things respondent stresses about the "coalition" are not suggested even remotely to have been unlawful or in any sense improper.

Thus, there is no contention that it was wrong for the several unions dealing with a single enterprise to consult together. Nor is it intimated that the unions offended the law—or behaved questionably, in any pertinent sense—when they succeeded in formulating and unanimously endorsing a set of common goals

[11] Respondent does cite a second, different aspect of the *Standard Oil* case, a pro-employer ruling, which has some bearing here and is touched on below.

(to be sought from a common management and a common exchequer) on matters like wages, seniority, holidays, and the like. Cf. *United States Pipe and Foundry Company* v. *N.L.R.B.*, 298 F. 2d 873, 877–78 (5th Cir.), *cert. denied*, 370 U.S. 919 (1962); *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40 (6th Cir. 1963); *American Radiator & Standard Sanitary Corporation*, 155 N.L.R.B. No. 69 (November 1965). It is no less permissible for unions so situated to share research, personnel, ideas, and information. They are allowed, in short, to assist each other and discover if possible areas of agreement, of "unity," and of mutual support in dealing with the unified, unitary, centralized management they confront. At least, subject to the two points considered below, neither respondent's nor our own researches have suggested any different view. And so it is not surprising that the essentially lawful efforts of the eight-union Committee were entirely public, and highly publicized; there appears to have been nothing, and no reason, to hide.

To be sure, the Company perceives a threat in all this. While it takes pains to coordinate its own dealings in all the many bargaining units, it foresees a danger of "national strikes" from an approach to similar coordination on the other side of the bargaining table. And it may well be true that efforts by the unions to collaborate in the exercise of their "countervailing power" could result, unless responsible people are careful, in larger collisions than the separate unions in isolation from each other might threaten.[12]

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[12] Professor Galbraith's germinal, and now familiar, concept of "countervailing power" comes quickly to mind in response to the contending views and efforts of the parties in this struggle. See *American Capitalism—The Concept of Countervailing Power* (2d ed. 1956). And see especially, concerning the relevance of the concept to labor-management relations, pp. 114–

There is no occasion here to do more than mention such fundamental considerations of power and policy underlying disputes like the one at bar. For the most part, such concerns are outside the province and the competence of courts. At any rate, our problem here remains to identify and deal with the alleged "taint" in the "coalition" which is at the center of respondent's thesis.

What this comes to in the end is two interrelated things: (1) that the eight collaborating unions were bent on a program of "joint" or "multi-union bargaining"; and (2) that they were "locked in" to an understanding that none would reach an agreement with respondent unless all did. Both particulars are found upon analysis to contain fatal defects of fact and of law.

17, 136, 151–53. Concerning the fears of those who regret the growth of countervailing power because it threatens possibly larger and bloodier struggles between approximately equal giants, see the following observations (p. 147):

> A number who have accepted as desirable the development of countervailing power by previously disadvantaged groups have been nonetheless careful to point out that it is decidedly a second-best solution. Given the power of the modern industrial corporation, it is doubtless well that those who do business with it have the capacity to protect themselves. But how much better to have avoided this struggle between the behemoths. There is something frightening and possibly dangerous about this bargaining between vast aggregations. How much better to have denied power to all. The world of countervailing power may be tolerable but it is highly imperfect.
>
> This is an appealing argument although it is not likely to appeal to anyone who is interested in results. Past efforts to extirpate economic power have been notably unavailing. One cannot suppose that they will be more successful in the future. Economic power may indeed be inherent in successful capitalism. We had better be content with restraints we have than to search for a never-never land in which they would be rendered unnecessary.

3. The notion of joint or multi-union bargaining refers in our context to a process of simultaneous bargaining with respondent by several unions representing, and separately certified for, separate units. It is a minimum consensus in the case that a party may seek such joint bargaining, and that the two sides could agree to have it, though it may be unlawful to insist adamantly upon it or use coercion to achieve it after the point of impass.[13] Thus, when the Steering Committee of the Committee on Collective Bargaining, on three occasions before April 13, 1966, proposed joint meetings on subjects of common interest, its conduct was in no sense unlawful. Nor, on the premises of this decision, was respondent wrong in rejecting these overtures.

Since, on respondent's own submission and on substantial authority (see note 13, supra), the IUE would have trod dangerous ground had it pressed adamantly for joint bargaining, there was substantial reason for it to retreat from its position. It purported to do so in its letter of April 13, 1966. And this, it may be recalled, was the letter that led to the May 4 meeting where the IUE Committee included the seven outsiders.

But there was no bargaining at all, let alone "joint" or "multi-union" bargaining, on May 4 or thereafter. The abrupt departure of respondent's committee precluded it. And here we reach a critical aspect of respondent's position. The appearance of the outer seven, respondent says, exposed a plot "to impose

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[13] The charging Union, at least, does not concede that such adamant insistence would be unlawful. For present purposes we assume, without having to decide, that the Union is wrong in this. Cf. *N.L.R.B.* v. *International Brotherhood of Elect. Wkrs.*, 266 F. 2d 349 (5th Cir. 1959); *Labor Board* v. *Borg-Warner Corp.*, 356 U.S. 342 (1958).

multi-union bargaining on the Company" (Post Hearing brief, p. 58); the "expanded bargaining committee was a bold and overt step in the march of the unions toward multi-union bargaining" (id. p. 71). In this view, it makes no difference that the IUE Committee said it had come only on IUE business. Likewise, there was no point in attempting to bargain and to see whether "multi-union" matters were proffered for consideration. The very constitution of the Union Committee, respondent says, imprinted the multi-union taint.

There is in all this a seeming notion that "multi-union bargaining" has some of the qualities of a stealthy disease, and that the Company might have been insidiously and unknowingly infected with it. The IUE had given its word that the effort to achieve such bargaining was over. Its Committee had arrived on May 4 with this assurance to respondent. Unless there is some mystery in all this, respondent's people could have tested the assurance by proceeding to bargain and waiting to see what happened.

We reject respondent's thesis and hold that it could not walk out in a state of supposed or pretended certainty that the Union's promise would be broken. There is sound reason, and substantial precedent, for dismissing the argument that representatives from other unions inevitably bring the infection of unlawful or non-mandatory joint bargaining. *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40 (6th Cir. 1963); *American Radiator & Standard Sanitary Corporation*, 155 N.L.R.B. No. 69 (Nov. 1965).

The argument is not less fallacious in this case because of the background of "unity" and joint bargaining proposals before May 4 on which respondent puts heavy emphasis. The IUE was entitled to change its course; following respondent's persuasive

view of the law on joint bargaining, it was required to do so. The law, like other normative disciplines, contemplates the possibility of, and welcomes, penitence. Respondent was not privileged to do less. Whether its stubborn refusal to listen on May 4 reflected earnest conviction, or was merely a considered ploy in the establishment of a litigating posture, it could not be justified by the conjectural claim that the IUE team was ineluctably bent on "multi-union bargaining." (See the nearly identical conjectures in *Standard Oil Company* v. *N.L.R.B., supra,* 322 F. 2d at 43–44). What the IUE was bent upon could only be determined with respondent's professed certainty by doing what respondent chose not to do—by staying and bargaining and seeing whether the IUE had lied when it said it had come to negotiate only for its own agreement. The choice respondent made, foreclosing any possibility of accommodation or understanding, was an elementary form of wrong under the Labor Act. It was, as petitioner asserts, an unlawful refusal to bargain.

4. There remains respondent's claim that the "coalition" of unions had agreed that none would sign any agreement with respondent unless or until all were ready to do so. We accept for this case the premise that such an arrangement among the unions would have been unlawful, and we assume further, though this may be more debatable, that one result would have been to erase respondent's duty to bargain with IUE. Cf. *Standard Oil Co.* v. *N.L.R.B., supra.* The assumptions do not absolve respondent.

It might be enough at this point to recall and repeat our finding that there was in fact no such agreement among the unions. But we go further and note that the whole subject, despite the eloquent lengths to

which counsel have gone for it, is not more than an irrelevant afterthought.

It is conceded that respondent's single ground for fleeing from the May 4 meeting was the presence of the seven from other unions. But for them, we are assured, respondent's people would have stayed and bargained. With this much conceded, the argument that the eight unions were "locked in" (to refrain from agreeing unless all agreed) becomes immaterial. At least as immaterial as respondent's extended argument that we should draw here upon the learning of conspiracy cases to infer that there was a secret plot to stay "locked in" despite the high assurances to the contrary. For if any of this mattered, respondent's one sticking-point would have been silly. If there was a conspiracy locking the unions in—and a secret one at that—it could plainly have proceeded whether or not outside people sat in on IUE sessions. Indeed, the sinister quality suggested by respondent's theory is actually diluted by the IUE's insistence on having the seven present. Conspirators are normally more conspiratorial. By the same token, if respondent had really been motivated by a belief in a conspiracy, it could scarcely have said, as it still does, that its objections would end with the departure of the seven.

At any rate, despite respondent's perseverance on this point, it was obliterated by respondent's chief witness at the hearing. This witness, respondent's Labor Relations Council, describing in detail the evolution and rationale of the Company's position, acknowledged candidly on the stand that the problem of a possible "lock-in" was at most a future contingency as of May 4, 1966. As he put it:

> * * * A point like that does not really come to fruition in terms of limiting the flexibility of

> the unions until sometime down the bargaining road, and on May 4th we considered it a purely truly anticipatory sort of thing.

That testimony neatly epitomizes the pervasive flaw in respondent's strategy and in its attempted defense against the Board's complaint. The Company's walk-out of May 4, taken in the best possible light, was inexcusably premature. If the IUE was ever to press impermissibly for "multi-union bargaining" or to demonstrate that it was unlawfully "locked in," either or both possibilities could only have materialized "sometime down the bargaining road." Respondent's asserted fears were never put to the test because it stopped and got off the road before the journey started.

A professed certainty that bargaining will become futile or lawless is no substitute for performance of the duty to bargain. Cf. *N.L.R.B.* v. *Sunrise Lumber & Trim Corp.*, 241 F. 2d 620, 624–625 (2d Cir.); *cert. denied*, 355 U.S. 818 (1957): *N.L.R.B.* v. *Jacobs Mfg. Co.*, 196 F. 2d 680, 683 (2d Cir. 1952). Respondent breached that duty on May 4, 1966, and remains in default to this day.

Third, the standards for preliminary injunctions under Section 10(j)

The parties have debated long and instructively the problem of criteria to govern (a) when the Board ought properly to seek a preliminary injunction under Section 10(j), and (b) when, if one is sought, it should be granted.

As to the first question, while the statute is not explicit on this, it seems plain in the scheme of things that the drastic remedy ought to be reserved for situations of special need. The effect of a district court's 10(j) injunction is to order, before the agency has

heard the matter, relief which is normally given only if and when the Board has exercised its primary jurisdiction and persuaded a Court of Appeals to agree with it. Recognizing the extraordinary character of such relief, the Board has in fact sought it only infrequently.

Respondent concludes that the Board is authorized to move under Section 10(j) only when the alleged violation is "flagrant"—apparently using the strong word to mean not only clear, but heinous and aggravated as well. Some occasional statements recorded in print give a semblance of support to this contention. Respondent cites, for example, speeches by individual Board members suggesting "flagrancy" as a standard for resort to Section 10(j). Closer to home, the petition in the instant case alleges that respondent has been guilty of "flagrant unfair labor practices," and it may be, strictly speaking, that this should not have been said unless it was tendered as a material assertion. Furthermore, the Board appears elsewhere to have announced "that it is the policy of the Board not to apply for a temporary injunction under Section [10(j)] unless unusual circumstances exist"—for example, an employer's "patent flouting of the Union's right to bargain collectively * * * without any legal basis" for such recalcitrance. *Reynolds* v. *Herron Yarn Mills,* 53 CCH Lab. Rel. Cases § 11, 347, p. 17, 148 (W.D. Tenn., May 23, 1966).

What emerges, however, is not the kind of straitened test respondent proposes. There is nothing in the language of the statute or its history to support this restrictive view. Though an alleged violation may not fairly be branded "flagrant," the remedy of Section 10(j) is surely appropriate and available when the impact upon the public interest is grave enough to justify swifter corrective action than the

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normal process of Board adjudication and court enforcement. The present case, involving a huge and basic enterprise with substantial impact upon the national defense and the economy generally, seems clearly to qualify.

It should be said, further, that Congress entrusted to the Board as the responsible agency the essential judgement whether the public interest requires the machinery of Section 10(j) be set in motion. Cf. *Labor Board* v. *I. & M. Electric Co.*, 318 U.S. 9, 18–19 (1943); *Guss* v. *Utah Labor Board*, 353 U.S. 1, 8–9 (1957); *Haleston Drug Stores* v. *National Labor Relations Board*, 187 F. 2d 418 (9th Cir.), *cert. denied*, 342 U.S. 815 (1951).[14] To be sure, the Section empowers the district courts "to grant * * * such temporary relief or restraining order *as it deems just and proper*" (emphasis added). And that mandate may be assumed here, at least *arguendo*, to import discretion sufficient to deny relief in routine unfair

[14] It seems desirable—it would surely be helpful—for the Board, after nearly twenty years of work with Section 10(j), to formulate and state in some form more authoritative than random speeches by members the criteria by which it determines whether to proceed under this Section. Such a formulation would guide the public, the courts, the agency itself, and give a measure of assurance that the action taken in individual cases is reasonably principled. This is not the first time, of course, that the Board as well as other agencies have been urged to tackle more widely the hard task of articulating intelligible and knowable rules of general applicability. See, e.g., Friendly, *The Federal Administrative Agencies—The Need for Better Definition of Standards* (1962); Peck, *The Atrophied Rule-Making Power*, 70 Yale L.J. 729 (1961). But it is clear that the Board has broad power to postpone or eschew grand ideals and proceed case by case; respondent has refrained, soundly, from suggesting that the Board erred here because it followed such course. Cf. *Securities & Exchange Comm'n* v. *Chenery Corp.*, 332 U.S. 194 (1947).

labor practice cases for which there is no good reason to short-circuit the normal processes of administrative hearing and judicial review. But cf. *Douds* v. *International Longshoremen's Ass'n*, 242 F. 2d 808, 811–812 (2d Cir. 1957). However that may be, the facts at bar scarcely suggest that the Board abused its own discretion when it concluded that preliminary relief is warranted and desirable in the public interest.[15]

While we have treated as if it were an open question respondent's theory that Section 10(j) is only for "flagrant" cases, the argument is also answered by a long course of judicial decision demonstrating that there is no such test. As the cases have evolved, it has become clear that the district courts are neither to

[15] The court is urgently invited by respondent to "balance the equities." Sufficient reason has been indicated already for declining the invitation; the Congress substantially struck the balance when it wrote Section 10(j), leaving particular implementations mainly for the Board's administrative judgment. Cf. *Douds* v. *International Longshoremen's Ass'n*, 242 F. 2d 808, 811–812 (2d Cir. 1957); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 609–610 (1952) (Frankfurter, J., concurring); *Hecht Co.* v. *Bowles*, 321 U.S. 321, 331 (1944). Even if this were not so, however, the balance would not tip for respondent; for the equities are heavily on the side of petitioner. Respondent has violated a basic statutory duty which Congress imposed "to substitute collective bargaining for economic warfare * * *." *Mastro Plastics Corp.* v. *Labor Board*, 350 U.S. 270, 284 (1956), see also *Douds* v. *International Longshoremen's Ass'n*, *supra*, at 282. The injunction petitioner seeks requires only that respondent proceed to bargain. Respondent, reporting vivid fears about the union "coalition," says meeting at a table where the seven intruders are present has to be a step on the road to a company-wide strike rather than littler strikes or none at all. The inexorability of this reasoning has not been demonstrated. There may, in the end, be a strike—even, against hope, a costly one. If there is, it will not be because respondent has proceeded to the bargaining table to test the possibility of agreement and the good faith of the IUE.

demand a showing of "flagrancy" nor to displace the Board's primary decisional authority, but must only determine in a Section 10(j) proceeding whether the Board has "reasonable cause to believe" that the accused party has been guilty of unfair labor practices. *Douds* v. *International Longshoremen's Ass'n*, 241 F. 2d 278, 281 (2d Cir. 1957); *McLeod* v. *Compressed Air, Foundation, Tunnel, Etc., Wkrs.*, 292 F. 2d 358, 359, 361 (2d Cir. 1961). To establish that, the Board, which has yet to make its administrative record, is not required to show more than a "reasonable possibility" that there will be an ultimate determination against the respondent. *McLeod* v. *Local 25, International Bro. of Elec. Wkrs.*, 344 F. 2d 634, 638, 639 (2d Cir. 1965); *Schauffler* v. *Local 1291, Internat'l Longshoremen's Ass'n*, 292 F. 2d 182, 187–188 (3d Cir. 1961); *Brown* v. *Pacific Telephone and Telegraph Co.*, 218 F. 2d 542, 543 (9th Cir. 1955).[16] This much, for reasons already reviewed at length, the petitioner has certainly demonstrated.

---

[16] Respondent has relied heavily upon the majority opinion of Judge Marshall in *McLeod* v. *Business Machine & Office App. Mech. Conf. Bd.*, 300 F. 2d 237 (2d Cir. 1962), where the district court's granting of an injunction under Section 10(*l*), not 10(j), was reversed. There, respondent stresses, the Court of Appeals observed that the district court must find not only "reasonable cause" to expect a Board decision that there has been an unfair labor practice, but also "reasonable cause to believe that the Board's decision * * * will be enforced by a Court of Appeals." *Id.* at 242 n. 17. The language, in its context, is not of particular value to respondent. Under Section 10 (*l*), the application for an injunction is mandatory, not discretionary, and is made by a regional officer or attorney without leave or sanction from the Board. Under 10(j), involved here, the Board, in its discretion, decides whether to seek an injunction. In the cited case, the charge and petition for an injunction were thought by the Court of Appeals to be

If it were necessary, the point could be put more strongly. The parties have made a detailed record. Despite respondent's proposed inferences about secret motives and hidden plots, there is little in the way of material dispute concerning the facts. The points of controversy are essentially legal rather than factual. Without meaning to usurp the Board's primary role, but merely to explicate the court's conclusions, it may be said that the decision would go for the petitioner as a matter of indepedent judgment if such a judgment were either required or permissible.

An order will issue restraining the respondent, pending final disposition of the Board's complaint, in accordance with the prayer of the petition. Counsel will settle such an order on notice.

(S) MARVIN E. FRANKEL, U.S.D.J.

AUGUST 18, 1966.

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opposed to existing Board precedent. And the problem, both in the district court and on appeal, was solely one of law.

In that setting, what the appellate court said (though it appears not to have been repeated or cited since) is reconcilable with the standard as it is usually defined. Superficially, there are difficulties of an obvious kind in forecasting what a court of appeals will do in reviewing an administrative ruling not yet delivered. As a practical matter, however, at least where the question is one of law, this can hardly mean more than a judgment by the district court that there is "reasonable cause" to consider the legal position of petitioner correct. And this, however the test is stated, is likely to describe what really happens. A district court, supposedly competent to decide questions of law, might well hesitate to issue an injunction on what it determines are fallacious legal premises.

ORDER OF MARVIN E. FRANKEL, DISTRICT JUDGE

United States District Court for the Southern District of New York

66 Civil 2155

[SAME TITLE]

ORDER GRANTING TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition of Ivan C. McLeod, Regional Director of the Second Region of the National Labor Relations Board, for a temporary injunction pursuant to Section 10(j) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before the Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case, has made its findings of fact and conclusions of law in an opinion filed herein, finding and concluding that there is reasonable cause to believe that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(a) (1) and (5) of said Act, affecting commerce within the meaning of Section 2 (6) and (7) of said Act, and that such acts and conduct will likely be continued unless enjoined.

Now, therefore, upon the entire record, it is

ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, General

Electric Company, its officers, representatives, agents, attorneys, and all persons acting in concert or participation with it or them, be and they are hereby enjoined and restrained from:

(a) Failing or refusing to meet, confer and bargain collectively in good faith with International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE) and its constituent locals, by declining to meet with the selected representatives of IUE and its constituent locals because of the presence of any representatives of other unions whom IUE and its constituent locals have invited to attend for the purpose of participating in the discussion and advising or consulting with IUE and its constituent locals;

(b) Failing or refusing to meet and bargain collectively in good faith with IUE and its constituent locals, upon request, for the purpose of discussing and negotiating various issues pertinent to, and in aid of, collective bargaining negotiations for a new agreement with respondent to succeed the September 26, 1963, agreement; and

(c) Failing or refusing to meet and bargain collectively in good faith with IUE and its constituent locals, upon request, as the exclusive bargaining representatives of the employees in appropriate units as certified by the Board, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Done at New York, New York, this 23rd day of August, 1966.

MARVIN E. FRANKEL,
United States District Judge.

APPENDIX C

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

SEC. 10. (h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101–115).

* * * * *

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

* * * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or

transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further,* That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D).

APPENDIX D

Supreme Court of the United States

No.—. October Term, 1966.

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD FOR THE SECOND REGION, PETITIONER

v.

GENERAL ELECTRIC COMPANY.

[September 21, 1966.]

APPLICATION FOR STAY

Memorandum of MR. JUSTICE HARLAN.

This is an application by the Regional Director of the National Labor Relations Board for the Second Region for a stay, pending certiorari proceedings, of a judgment of the Court of Appeals for the Second Circuit setting aside a temporary injunction issued by the District Court against the General Electric Company under § 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j) (1964 ed.). Section 10(j) authorizes the Board, upon the issuance of an unfair labor practice complaint, to petition an appropriate United States district court for "such temporary relief or restraining order" as the court "deems just and proper" pending adjudication of the complaint by the Board.

In this case, an administrative complaint was issued alleging that General Electric had violated § 8(a)(1)

and (5) of the Labor Act, 29 U.S.C. § 158(a)(1), (5) (1964 ed.), by refusing to bargain collectively with the International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE), the certified bargaining agent for certain company employees, over the terms of an agreement to replace an existing contract between the two which expires on October 2, 1966. General Electric's refusal to bargain with IUE was caused by the presence on the Union's bargaining committee of representatives of other unions with which General Electric also has collective bargaining agreements that expire at about the time the IUE agreement terminates. The company contended that their presence at the IUE negotiations constituted an unlawful attempt to impose multi-union company-wide bargaining. Upon authorization by the Labor Board, the Regional Director filed this suit for a § 10(j) injunction.

The District Court, after an evidentiary hearing, held that on the particular facts of this case, (1) the Board had "reasonable cause to believe" that General Electric's refusal to bargain would be held to constitute an unfair labor practice, and (2) the circumstances justified the issuance of a temporary injunction, the effect of which is to require General Electric to bargain with the present IUE committee pending Labor Board resolution of the unfair labor practice charge. The Court of Appeals, filing a written opinion, set aside the injunction, refused the Regional Director's request for a stay of its mandate pending certiorari, and granted General Electric's application that the mandate issue forthwith.

Having carefully considered the papers submitted on both sides, I am of the opinion that petitioner is entitled to a stay on terms indicated below. The underlying issue in this case—the standards govern-

ing the application of § 10(j)—has not heretofore been passed upon by this Court and is of continuing importance in the proper administration of the Labor Act. In light of the District Court's findings of fact, which were not disturbed by the Court of Appeals, petitioner's position as to such standards cannot be deemed insubstantial. See, *e.g., Douds* v. *International Longshoremen's Assn.,* 241 F. 2d 278; *Brown* v. *Pacific Tel. & Tel. Co.,* 218 F. 2d 542; cf. *McLeod* v. *Local 25, Int'l B'h'd of Elec. Workers,* 344 F. 2d 634; *Schauffler* v. *Local 1291, Int'l Longshoremen's Assn.,* 292 F. 2d 182; see in addition *American Radiator & Standard Sanitary Corp.,* 155 N.L.R.B. No. 69, 60 L.R.R.M. 1385, appeal to the Court of Appeals for the Sixth Circuit pending; and *Standard Oil Co.* v. *NLRB,* 322 F. 2d 40. And the competing equities relevant to this application seem to me to tip in favor of some interim relief being granted at this stage. On the other hand I consider that the powers of a single Justice of this Court should be exercised sparingly in the context of this unusual situation.

On these premises I shall stay the execution and enforcement of the judgment of the Court of Appeals but only pending this Court's disposition of petitioner's petition for certiorari, and only on condition that such petition is filed on or before October 24, 1966. If certiorari is denied, this stay shall terminate forthwith. If certiorari is granted, I shall, pursuant to Rule 50(6) of the Rules of this Court, submit to the Court at the time it so votes the application now before me so that it may determine whether a further stay should be granted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 645

IVAN C. McLEOD, Regional Director of the National Labor Relations Board for the Second Region,

Petitioner,

—v.—

GENERAL ELECTRIC COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM OF GENERAL ELECTRIC COMPANY IN OPPOSITION

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IN THE

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GENERAL ELECTRIC COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM OF GENERAL ELECTRIC COMPANY IN OPPOSITION

Statement of the Case

Preliminary Statement

This proceeding became moot on October 14, 1966, when the parties concluded the negotiations which were the subject of this proceeding, by reaching a new 3-year collective bargaining agreement. The agreement, which will not expire until October 26, 1969, has been reduced to writing and signed.

Moreover, the petition for a writ of certiorari in this case at no time, we submit, presented a question requiring or worthy of review by this Court.

The Underlying Facts and the Issue as Presented to the Courts Below

General Electric Company (hereafter the Company) and the International Union of Electrical, Radio and Machine Workers, AFL-CIO (hereafter the IUE or the Union) have been parties to a collective bargaining relationship with each other for over 15 years. During all of the time prior to 1966, the IUE Negotiating Committee has been composed exclusively of members or officials of IUE and of IUE professional consultants (44a-48a).* The bargaining has been confined in its application to units represented either by the IUE International or by its locals.

In 1966 the IUE, acting as part of an eight-union coalition initiated by the AFL-CIO, tried to change this established pattern. Its first step on this road was to join the coalition as a charter member and to pledge itself with the other unions there represented[1] to a unity program whereunder all members were to "think" together, "plan" together and "act" together (554a). Its next step, taken in concert with its co-pledgors to unity, was on at least two occasions to demand joint bargaining for all unions to supplant the individual union bargaining which theretofore had prevailed in accordance with the certifications of

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* References with the suffix "a" are to the appendix to the Company's brief in the Court of Appeals. References to "Petition" are to the Government's Petition for a Writ of Certiorari.

[1] Each of the other unions (or constituent locals thereof) represented Company employees in separate units for which they had bargained separately in the past. They are International Brotherhood of Electrical Workers (IBEW), International Association of Machinists (IAM), Sheet Metal Workers (SMW), Allied Industrial Workers (AIW), United Auto Workers (UAW), American Federation of Technical Engineers (AFTE) and Flint Glass Workers (FGW).

the National Labor Relations Board and the practice of the parties. The Company, acting within its rights (670a), rejected both attempts.

On April 13, 1966, IUE purported to abandon the joint approach and wrote the Company that it would not "pursue the matter any further and will abandon any suggestions for any such joint meeting or for joint discussions" (460a).[2]

The Company welcomed this return to the traditional pattern of bargaining and promptly arranged for a pre-negotiations discussions meeting on May 4, 1966.

At that meeting IUE brought with it, in addition to its traditionally composed committee, representatives of the very coalition unions with which it had formally pledged unity and with which it had assured the Company it no longer intended to combine for the purpose of joint bargaining. As noted in the Petition herein (p. 7), several of these seven were wearing lapel buttons bearing the insignia of their respective unions of origin.

The Company refused to meet with the committee so long as the representatives of the other unions were present; and the Section 10(j) proceeding arose solely because

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[2] Shortly after this disclaimer, on April 25th, Local 320 of the IUE, which is the certified bargaining representative in the Company's Syracuse, New York plant, and whose chief executive officer is a long time member of the IUE-GE Conference Board and negotiating committee (65a, 153a-154a), notified its members under the banner "Unity Still In Effect" that "the eight unions dealing with General Electric still are abiding and will abide by their unity resolutions; and that is for no one to sign a contract with General Electric until all parties sign" (569a). On March 3, 1966, Mr. John H. Callahan, Chairman of the IUE-GE Conference Board and its negotiating committee, at a press conference on the coalition's unity program had stated: "We don't sign with G. E. until all sign" (575a).

of the Union's insistence on the inclusion of the outside union representatives in the IUE-GE bargaining relationship and of the Company's resistance thereto.

The Board, accepting the Union's charge of refusal to bargain against the Company based on the facts summarized above and rejecting the Company's charge against the Union based on the same facts, issued a complaint against the Company and initiated this proceeding for a Section 10(j) injunction (29 U. S. C. §160(j)).

There has been no trial of the merits of this case before the National Labor Relations Board and, of course, no decision thereof on the merits. By the same token, there has been no Court of Appeals review of the questions involved in the case and no court enforcement order. Instead, by recourse to Section 10(j), the Board sought and the District Court granted an injunction *before* trial and *before* review providing all of the relief the Board could have sought if it had tried the case, decided it, and been sustained by a Court of Appeals. In following this procedure, the Board and the District Court had, until reversed by the Court of Appeals, upset the long established bargaining pattern between the parties.

Had this case presented a claim of conduct establishing a wilful violation of settled law, Petitioner's resort to Section 10(j) would at least have been consistent with its own public declarations that the section was to be used "not as a broad sword, but as a scalpel" in cases of "flagrant" acts or "wilful and calculated" violations (see 27 *Annual Report of the Board,* p. 4 (1962); Statement of Frank W. McCulloch, Chairman of the National Labor Relations Board, *The National Labor Relations Board in*

Action, before the Eighth Annual Joint Industrial Relations Conference, Michigan State University, April 19, 1962; Statement of Board Member Fanning, before the Ninth Annual Industrial Relations Conference of Electronic Industries Association, March 1962) and with its own petition, which (13a) alleged the violation here to have been a "flagrant" one. Even in that event it would have had to bring itself within the statutory requirement of showing that the extraordinary relief here sought was "just and proper" in light of the facts of this case.

But the basic legal question on which the claimed violation depended, as noted by the Court of Appeals, "is a difficult one to resolve and one which no court has considered" (Petition, p. 23). It is in a developing field of law wherein the precedent nearest to the case at bar is a Labor Board decision which is about to be but has not yet been reviewed by the Court of Appeals for the Sixth Circuit (*American Radiator & Standard Sanitary Corp.*, 155 NLRB No. 69, 60 LRRM 1385 (1965)). The novelty of the question is attested by the close interest of the labor bar in the ultimate resolution of this developing phase of the law (1966 Report of the Section of Labor Relations Law of the American Bar Association, p. 422).

A more inappropriate vehicle than this case for review of the standards applicable to Section 10(j) injunctions would be difficult to imagine. For under *any* appropriate standards—and certainly under those which the Board has set for itself both outside the confines of this case and in its pleading here—the Section was not intended to substitute District Court appraisal in a motion part for National Labor Relations Board trial and Court of Ap-

peals review in a case where the question whether the facts establish *any violation of law at all* is open to grave doubt.

When there is added to what we have just said the additional and admitted circumstances (Petition, p. 12) that this threshold intervention was not sought to ward off irreparable harm to Petitioner and that it not only was not designed to preserve the *status quo* existing before the controversy leading to this case arose, but on the contrary, to reverse and upset that *status quo,* the total absence here of any question meriting Supreme Court review is confirmed.

In its present attempt to obtain this Court's review of the Court of Appeals' reversal of the District Court injunction originally granted in this case, the Labor Board has not only abandoned its original allegation of "flagrant" violation by the Company but has basically altered its position concerning the governing tests for the issuance of a Section 10(j) injunction. In fact, if there is any confusion as claimed in the Petition (Petition, p. 12), it arises from the *Petitioner's* shifting of position and its espousal of differing standards at various stages of this litigation.

Questions Presented

In its Memorandum of Points and Authorities submitted in the District Court, the Government stated (Memorandum, p. 3):

> "*As in the case of traditional equity practice with respect to interlocutory relief,* the prerequisite to the granting of the relief contemplated by Section 10(j) is a finding by the District Court that there is reasonable cause to believe that a violation of the Act, as charged, has been committed, *and that the equitable relief is 'just and proper.'*" (Emphasis ours.)

In its brief to the Court of Appeals, the Government stated the issue before that court in the following language (Appellee's brief, p. 18):

> "The issue before this Court is whether or not the court below was clearly erroneous in finding and concluding that there was reasonable cause to believe that a violation of the Act, as charged, has been committed and that an injunction under Section 10(j) of the Act *was just and proper.*" (Emphasis ours.)

The language quoted above is the Board's own statement of the standards to be applied in a Section 10(j) proceeding and is indeed a far cry from the statement of the issue as it appears in the Board's Petition to this Court. Here the Board states the question in the following terms (Petition, p. 2):

> "The question presented is whether the Board is entitled to an injunction where it shows (1) that there

is reasonable cause to believe the Act has been violated, and (2) *that the impact on the public interest will be substantial if the relief is withheld.*" (Emphasis added.)

The attempted substitution before this Court of the standard of "impact on the public interest" in the place and stead of the statutory requirement that the relief be "just and proper" is not only a departure from the position taken by the National Labor Relations Board in the courts below but, as we shall show, is an erroneous attempt to convert Section 10(j) into a statute for curbing emergency strikes involving large employers—a purpose for which it was never intended.

We believe the only questions presented by this petition are 1) has this case become moot and 2) if not, did the Court of Appeals err when it reversed and vacated an injunction under Section 10(j) which a) constituted an intervention on behalf of one of two contending parties to support an unprecedented course of conduct on a legal theory which is at best highly dubious and has not been settled by the courts, b) disrupted the *status quo,* and c) was unnecessary to protect the National Labor Relations Board, as guardian of the public policy of the National Labor Relations Act, from irreparable harm.

We submit, that the answer to the first question just posed should be in the affirmative, and the answer to the second question, if reached, should be in the negative.

Opinions Below

The essence of the District Court's opinion, as far as Section 10(j) is concerned, was that the clarity or flagrancy of the violation sought to be restrained need not be shown because, according to its assertion, "the impact upon the public interest is grave enough to justify swifter corrective action than the normal practice of Board adjudication and court enforcement. The present case, involving a huge and basic enterprise with substantial impact upon the national defense and economy generally seems clearly to qualify." (676a.) While, reasoned the District Court, the statutory charge to the courts to grant such relief "as it deems just and proper" might justify the denial of relief in a "routine" unfair labor practice case, it was not, in the court's view, adequate to offset, by a consideration of general equitable principles, the Board's conclusions, (1) that it had reasonable cause to believe a violation had occurred, and (2) that such putative violation, if permitted to continue, would result in a strike endangering the public interest (677a).

This attempt to substitute the size of the employer and the prospect of a strike as criteria overriding every other pertinent consideration, including the essential soundness of the case on which the Board was proceeding and the respective equities of the parties, was, we submit, not an application of the statute but an amendment of it.

The Court of Appeals reversed and vacated the injunction.[3] Directing its attention to the question whether

[3] At pages 9 to 10 and page 11 of the Petition, it is stated in varied language that the Court of Appeals "did not disturb" the findings of the District Court as to probable violation of the Act, nor as to the gravity of the impact on public interest of failure to

the relief requested by the petition was just and proper, the court stated (Petition, p. 23):

> "We are not convinced that the facts in the present case reveal those special circumstances which must be present before a court will intervene and issue an injunction prior to the Board's hearing and decision. The Board has not demonstrated that an injunction is necessary to preserve the status quo or to prevent irreparable harm."

As viewed by the Court of Appeals, the fact that under the Labor Management Relations Act the District Court had jurisdiction to issue an injunction in a labor situation did not mean that the court was to abdicate its responsibility to look to general equity principles as guides when petitioned to grant preliminary relief. This was especially so where, as here, the claim of violation was grounded on a novel and difficult legal issue. Under such circumstances the court stated (Petition, p. 24):

> "It would be more in keeping with the scheme intended by Congress to have this case, particularly

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grant an injunction. To the extent that this statement may give the impression that the Court of Appeals approved the findings of the District Court on these subjects—we submit that it is misleading. What the Court of Appeals said (p. 22) was as follows:

> "It should be noted explicitly at the outset that with our disposition of this case today we are not passing on the basic controversy between GE and the IUE which Judge Frankel correctly characterized as 'the extent of IUE's right to designate such additional, non-voting members of its Negotiating Committee—or, conversely, of the Company's right to hold such designees unacceptable or impermissible." *The only issue which we decide today is the propriety of the section 10(j) temporary injunction issued against the General Electric Company.*" (Italics ours.)

because of its unusual characteristics, follow the path of Board hearing and decision on the unfair labor practice charges, rather than to short-circuit the established administrative design."

ARGUMENT

I.

This case has become moot.

On October 14, 1966, the Company and the Union's Negotiating Committee jointly announced agreement on the terms of a renewal of their contract which expired on October 2, 1966. This agreement successfully concluded the negotiations which were the subject of this proceeding. (Petition under Section 10(j), par. 4; 11a.) On October 16, 1966, the Union formally ratified the settlement, and on October 28, the agreement was signed, thus concluding national contract negotiations until October 26, 1969. The controlling consideration which moved the District Court in issuing the injunction was to bring the Company to the bargaining table and there reach agreement if possible (676a, 683a). That purpose has now been realized.

As this Court has long held, it is its function to decide actual cases and controversies (*United States* v. *Alaska S.S. Co.*, 253 U. S. 113, 116 (1920)) and "not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it" (*Mills* v. *Green*, 159 U. S. 651, 653 (1895)). We submit that because of the settlement of the underlying dispute herein any decision by this Court would have no meaningful effect on any viable

matter between these parties. See *Oil Workers Union* v. *Missouri,* 361 U. S. 363, 367-369 (1960); *Harris* v. *Battle,* 348 U. S. 803 (1954). Under the circumstances, the petition for a writ of certiorari should be dismissed.

II.

This case never presented any question requiring or calling for review by this Court.

The standard followed by the Court of Appeals in deciding this case and in applying the statutory test of "just and proper"—a test which, as we have seen, was accepted by Petitioner both in the District Court and in the Court of Appeals—in no way created confusion as claimed in the petition for a writ of certiorari.

These words embody the historical tests which traditionally have guided the equity courts in their exercise of the extraordinary power of preliminary injunction. This Court, indeed, so held in *Hecht Company* v. *Bowles,* 321 U. S. 321 (1943). That case involved an application for a preliminary injunction under the Emergency Price Control Act of 1942. The District Court, on the basis of traditional equitable principles, had refused to grant the injunction only to be reversed by the Court of Appeals for the District of Columbia, which construed the Act to *require* the issuance of the injunction once the facts had established the existence of a violation. This Court held that the provisions of the Act in question did not make the issuance of an injunction mandatory and reversed, saying:

> "A grant of *jurisdiction* to issue compliance orders hardly suggests an absolute duty to do so under any

> and all circumstances. We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice an unequivocal statement of its purpose would have been made" (p. 329).

The Court concluded that it was not the congressional intention in the Act to require the issuance of the injunction as a matter of right and it would not imply an intention by Congress to dispense with the traditional practices of the courts of equity applicable in such preliminary injunction situations (p. 330).

The Court continued by noting that both the agency and the courts were jointly involved in the "war against inflation" (p. 331), which Congress had described as the "most destructive" consequence of war save the loss of human life (*ibid.*). Under such circumstances, while the courts were to administer the law in light of the public interest to be served, they were not to forsake their traditional tests for exercising discretion where injunctions were sought.

The Board in the instant case would have the courts ignore all other relevant equities because of its claim of involvement of the "public interest."

In the final analysis, what the Petition really urges is that this Court should approve the injunction issued by the District Court on the ground that where a strike against a major employer is threatened the courts are to give controlling importance to this threat and to ignore the questions a) whether a violation of law has actually occurred and b) whether the relative equities of the parties justify preliminary injunctive relief.

The threat of a strike if the Company should continue to be unwilling to meet with the IUE's unprecedentedly expanded committee (stressed and restressed both in the District Court opinion and in the Petition for certiorari), was not supported in the record and the *true* threat of strike which inhered in the joint action of the unions to exact an outsize economic settlement was ignored.[4] But the emphasis on the Company's size, and on the implications of a strike against it, was erroneously placed for another and more fundamental reason. Under no standard conceivably to be followed under Section 10(j) could an injunction be issued where the very existence of a violation of law by the Company was subject to the gravest doubt and involved, as the Court of Appeals found, "a difficult [question] to resolve and one which no court has considered."

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[4] The suggestion that such a strike might result seems to have been based on the testimony of Paul Jennings, President of the Union, before Judge FRANKEL (R. 207a), as follows:

> "Q. Mr. Jennings, if the situation continues as it is today, with the company refusing to meet with the designated individuals as they did on May 4, 1966, what would be the consequences, in your opinion, at the time of the expiration of the contract in October of 1966? A. If the company refuses to meet with a committee of the I. U. E., *and if there are no negotiations with a committee of the I: U. E.*, when the contract expires there will be a strike *if there are no negotiations.*" (Italics ours.)

It will be noted that Mr. Jennings did not take the position that a strike would necessarily result from a refusal by the respondent to negotiate with a committee including representatives of other unions, nor did he take the position that IUE would have refused to continue negotiations if such representatives were excluded. Nor has IUE ever taken such a position, so far as the record shows.

Reference is also made to testimony by a Company witness to the general effect that if the *coalition* struck there would be "the greater possibility of a broader strike" (417a). In fact, this broader strike was only narrowly averted by Presidential intervention.

It was the Board's attempt to impose its view of this difficult question on the Company, by District Court action, before a Board trial and before any opportunity for review by the Court of Appeals that led to the reversal here.

Furthermore, the legislative scheme of the Labor Management Relations Act of 1947 clearly establishes that the obstruction to commerce, which might be involved if a strike were called against the Company by the Unions participating in the coalition, was to be eliminated, if at all, pursuant to the provisions of Title II of that Act and, most particularly Section 176 thereof entitled "National Emergencies" (29 U. S. C. §176, *et seq.*). It was clearly the intention of the Eightieth Congress which enacted both the National Emergencies provisions and Section 10(j) that, when national defense or the economy generally—more appropriately the "national health or safety"—is affected by a major strike or lockout, the procedure it provided in Sections 176 to 182 was to be followed. Any attempt by the Government to substitute the procedures of Sec. 10(j) for these sections is entirely without warrant or authority.

The Court of Appeals suggested that in a case like that at bar, the Board should more appropriately expedite its own proceedings, thereby fulfilling its role in the legislative scheme.

The Board's contention that the Congress was moved to enact Section 10(j) because *inter alia* Board procedure for decision and enforcement was too slow, is no answer to the suggestion of the Court of Appeals.

The point of the Court of Appeals' suggestion is that in a novel case, which in the eyes of the Board has great

public importance, the Board should expedite its own machinery so that it can proceed under Section 10(e) instead of 10(j). It could then more appropriately ask the Court to expedite its procedures to review a fully developed Board record. It is clear that the Board could have acted with considerably greater dispatch than it did. Quite apart from the possibility of abridging the more than two months that elapsed between the filing of the Union's charge and the issuance of a complaint, it seems not even to have occurred to the Board, even now—after the Court of Appeals' opinion—that it could have heard this case directly without intervention of a Trial Examiner if it wanted to do so. The Act so provides, 29 U. S. C. §160(c).

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. 774

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Petitioner*

v.

GENERAL ELECTRIC COMPANY AND IVAN C. McLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Petitioner*

v.

GENERAL ELECTRIC COMPANY AND IVAN C. McLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The International Union of Electrical, Radio and Machine Workers, AFL-CIO, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case, which was entered on September 8, 1966.

OPINIONS BELOW

The opinions of the court of appeals and of the district court are not yet officially reported. They are printed respectively as Appendix A, pp. 20-25 and Appendix B, pp. 27-67 to the petition for a writ of certiorari in *McLeod* v. *General Electric Company,* No. 645, October Term 1966, now pending before this Court.

JURISDICTION

The judgment of the court of appeals (Appendix A, p. 26, petition in No. 645, O. T. 1966) was entered on September 8, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

Section 10(j) of the National Labor Relations Act empowers the Labor Board, upon the issuance of an unfair labor practice complaint, to petition a federal district court for "appropriate temporary relief or restraining order", and confers jurisdiction upon the district court, when such a petition is filed, "to grant to the Board such temporary relief or restraining order as it deems just and proper". The questions presented are:

1. Whether a district court may properly grant a temporary injunction enjoining continuance of the unfair labor practice alleged in the Board's complaint pending Board adjudication where the court finds a reasonable possibility that the Board's complaint will ultimately be sustained.

2. Whether a court of appeals may properly reverse a temporary injunction issued by a district court under Section 10(j) without any determination by the court

of appeals that the district court abused its discretion or erred in its finding that there was a reasonble possibility that the Board's complaint against the respondent would ultimately be sustained.

3. Whether there is any requirement that the temporary injunctions sought by the Board under Section 10(j) issue only to preserve the status quo or prevent irreparable injury and, if there is such a requirement, whether the temporary injunction issued here failed to meet such a requirement.

4. Whether the view of the court of appeals that the Board should have expedited its proceedings rather than have applied for a temporary injunction constituted a proper basis for reversing the temporary injunction issued by the district court.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in Appendix C, pp. 68-70, petition in No. 645, O.T. 1966.

STATEMENT

On May 9, 1966, the International Union of Electrical, Radio and Machine Workers, AFL-CIO, hereinafter called IUE, filed a charge with the General Counsel of the National Labor Relations Board alleging that on May 4, 1966, and at all times thereafter, GE has refused to bargain collectively with IUE by refusing to meet unless IUE changed the composition of its negotiating committee (R.17a).[1]

[1] "R" references are to the Appendix to General Electric's brief in the Court of Appeals, nine copies of which were filed with the Clerk of this Court in No. 645, O.T. 1966.

On July 13, 1966, the General Counsel of the Board issued a complaint against GE alleging that GE was violating Section 8(a)(5) and (1) of the Act by refusing to recognize and meet with an IUE bargaining committee that included individuals who also represent other labor organizations which engage in collective bargaining with GE (R.17a-24a).

On July 15, 1966, the Regional Director, acting for and on behalf of the Labor Board, petitioned the United States District Court for the Southern District of New York for a temporary injunction restraining GE from its continued violation of Section 8(a)(1) and (5) of the Act pending the final determination of the complaint by the Board (R.7a-16a). The district court held an evidential hearing from July 25 through 29, 1966 (R.42a-422a) and on August 18, 1966, handed down an opinion containing findings of fact and conclusions of Law (R.642a-684a), and on August 23, 1966, issued a temporary injunction (R.3a-4a). The Court of Appeals for the Second Circuit reversed (pp. 20-25, petition in No. 645, O.T., 1966). On September 21, 1966, Mr. Justice Harlan stayed execution of the court of appeals' judgment pending the filing of a petition for a writ of certiorari by the Regional Director and its disposition by this Court, provided a petition was filed by October 24, 1966 (pp. 71-73, petition in No. 645, O.T. 1966).

A. The Facts

GE is engaged in the manufacture, sale and distribution of electrical and electronic equipment, chemicals, plastics and other items, including a variety of products for national defense and atomic energy programs.

(Op. R.643a; R.56a, 59a-61a).[2] GE officials consider it the most diversified large corporation in the country, it being engaged in 15 of the basic 21 industries listed by the Department of Commerce (R.330a).

GE has approximately 290,000 employees, distributed over 60 plants spread through 30 states and more than 400 other installations (service establishments, warehouses, etc.) so that it operates in every state in the Union (Op. R.643a; R.330a). About half of its employees are organized (Op. R.643a; R.331a). These are distributed in about 150 bargaining units represented by some 80 unions (Op. R.643a; R.331a-333a).

The IUE has been certified as the bargaining representative of about 80,000 of GE's employees in some 65 to 70 different GE plants (Op. R.643a; R.56a; 331a). GE has for many years maintained national agreements with IUE applicable on a chain-wide basis to all plants for which IUE is the certified representative or becomes so certified during the term of the agreement (Op. R.643a; R.34a, 329a, 332a-334a; Bd. Exh. 3, p. 1. R.44a).

Although the IUE signed national agreements with GE in 1958, 1960 and 1963, the IUE regarded the terms which GE imposed on it in these agreements as "disasterous" (R.164a). Unfair labor practice charges, alleging among other things that the Boulware technique of playing the unions off against each other to obtain acceptance of terms unilaterally devised by GE constituted a violation of Section 8(a)(1) and (5),

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[2] References to the opinion of the district court are designated by the prefix "Op." followed by the pages of the appendix where the pertinent parts of the opinion is printed. The references following the citation to the opinion are to the supporting evidence.

were filed as to both the 1960 and 1963 negotiations. The Board sustained these charges as to the 1960 negotiations in *Matter of General Electric,* 150 N.L.R.B. 192, now pending in the United States Court of Appeals for the Second Circuit upon the Labor Board's petition for enforcement and GE's petition for review.[3] Both the IUE and the Steelworkers filed charges alleging that GE's similar applications of its Boulware techniques in the 1963 negotiations constituted an illegal refusal to bargain in good faith (NLRB Case No. 2-CA-9587). These charges are still pending undecided before the Labor Board.

Beginning in 1960 the IUE and various of the other unions representing GE employees attempted to develop some form of cooperation which would achieve for their members true collective bargaining (R.181a, 184a, 186a-188a). In 1966 this cooperation developed to the point of each of seven cooperating unions appointing to its respective negotiating committee, a representative from each of the other cooperating unions (Op. R.659a; R.49a-50a, 101-102a, 158a, 263a, 292a). This form of cooperation between unions had been accepted by the motor industry, as for instance in negotiations between UAW and General Motors,

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[3] The District Court in the instant case took judicial notice of these prior Board proceedings (R. 143a). The right of the IUE to intervene in the review and enforcement proceedings in the Court of Appeals and to file its own petition for review was before this Court in *International Union of Electrical, Radio and Machine Workers* v. *N.L.R.B.*, 382 U.S. 366, granting certiorari, vacating and remanding orders entered by the United States Court of Appeals for the Second Circuit without opinion which denied intervention and dismissed IUE's petition. The refusal of the Court of Appeals after remand to permit IUE to maintain review proceedings, 358 F. 2d 292, led to the petition for certiorari in No. 341, this Term, which was denied October 17, 1966.

IUE representatives had served on a UAW bargaining committee (R.175a-176a, 203a-204a, Tr. 557-562), and had received the approval of the Labor Board[4] and the United States Court of Appeals for the Sixth Circuit.[5]

GE refused to meet with the IUE-negotiating committee so long as it included representatives from other unions (Op. 660a-661a; R.51a-52a; 338a-342a, 355a-356a, 366a-367a). The IUE accordingly filed the unfair labor practice charge which initiated these proceedings (R.17a).

B. The Decision of the District Court

The district court held that GE had no legal justification for its refusal to meet with the IUE committee expanded by inclusion of representatives of other unions, that there is compelling ground to expect eventual findings by the Board that GE violated Section 8(a)(1) and (5) of the Act by its refusal to meet and that a preliminary injunction requiring GE to meet with the expanded IUE committee is just and proper (Op. R.663a). Characterizing the case in its substantive aspect as presenting "the boldest and most explicit form of refusal to bargain" (Op. R. 665a), the court found that there was no basis in the record for finding any exception to the well established principle that neither employer nor union may veto

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[4] *Standard Oil Co.*, 137 NLRB 690 (1961) enforced, 6th Cir., 1963, 322 F. 2d 40; *American Radiator & Standard Sanitary Corp.*, 155 NLRB No. 69 (1965) Cf. *Prudential Ins. Co.*, 124 NLRB 1390, 1396, enf'd in this respect 3rd. Cir., 1960, 278 F. 2d 181.

[5] *Standard Oil Company* v. *N.L.R.B.*, 6th Cir., 1963, 322 F. 2d 40; compare *U.S. Pipe & Foundry* v. *N.L.R.B.*, 5th Cir., 1962, 298 F. 2d 873, certiorari denied, 370 U.S. 919.

the other's choice of bargaining representatives (Op. R.666a-675). The court pointed out that the Sixth Circuit 1963 holding in *Standard Oil Company* v. *N.L.R.B.*, 322 F.2d 40 "rejected an employer position undistinguishable in principle from the one pressed here" (Op. R.668a).

With respect to the appropriateness of preliminary injunctive relief, the district court rejected GE's contention that a "flagrant" violations was prerequisite (Op. R.677a), stating that the remedy "is surely appropriate and available when the impact upon the publict interest is grave enough to justify swifter corrective action than the normal process of Board adjudication and court enforcement" (Op. R.676a). The court held that the present case "involving a huge and basic enterprise with substantial impact upon the national defense and economy generally, seems clearly to qualify" (Op. R.676a).

Recognizing that courts in a Section 10(j) proceeding are not "to displace the Board's primary decisional authority" (Op. R.677a) but issue an injunction if the Board establishes a "reasonable possibility" of ultimate decision against the respondent (Op. R.678a), the court determined "that the decision would go for the petitioner as a matter of independent judgment if such judgment were either required or permissible" (Op. R.678a).

C. The Decision of the Court of Appeals

The court of appeals reversed (pp. 20-25 of petition, No. 645, O.T. 1966). It did not hold that the district court erred in finding that GE's conduct was illegal under established Board precedents or in finding that there was reasonable cause to believe that GE's con-

duct would ultimately be held illegal. Nor did the Court of Appeals find that the district court had erred in its balancing of the equities. The exact basis of the Court of Appeals reversal is not clear. Its conglomeration of objections to the district court's injunction was stated by the court of appeals as follows (pp. 23-24 of petition, No. 645 O.T. 1966):

> "The Board has not demonstrated that an injunction is necessary to preserve the status quo or to prevent any irreparable harm. Moreover, the basic legal question underlying its conduct—the very same question presented in the *American Radiator Case*, 155 NLRB No. 69 (1965) in which the Board did not see fit to seek an injunction—is a difficult one to resolve and one which no court has considered."

The Board's failure to seek an injunction in the *American Radiator* case while obviously irrelevant, is misleading because the American Radiator Company met with the expanded union committee, albeit under protest.

The circuit court further stated (p. 24 of petition, No. 645, O.T. 1966):

> "It would be more in keeping with the scheme intended by Congress to have this case follow the path of Board hearing and decision on the unfair labor practice charges, rather than to short-circuit the established administrative design. The Board cannot abdicate one of the prime purposes for which it was created and thus deprive the Court of the expertise which would be available to it in reviewing the Board's holding in an enforcement proceeding."

REASONS FOR GRANTING THE WRIT

The Solicitor General has filed a petition for a writ of certiorari to review the judgment below, No. 645, O.T. 1966. We file the instant petition out of concern that the question presented as stated in the petition in No. 645 may not adequately present the basic issues respecting the proper use of injunctive procedures which should be decided by this Court and which are raised by the opinion of the court of appeals in reversing the injunction granted by the district court in the instant case. The question presented as stated by the Solicitor General in his petition, p. 2, makes the substantiability of the impact on the public interest of withholding injunctive relief one of the applicable criteria. We submit that any continued violation of the law which deprives employees of their rights under the Act during the processing of a case by the Board, affords sufficient basis for the issuance of the injunction, without need to prove any additional impact on the public interest. And the failure of the Solicitor General to include in his questions the status quo, irreparable harm and lack of Board expedition leaves us uncertain that this Court would deem itself free to consider those issues should only the Solicitor General's formulation of the question be before this Court.

If this Court is of the opinion that the questions presented as we state them are all encompassed within the question presented in No. 645 and if this Court should grant that petition for a writ of certiorari, we would have no desire to burden this Court with an additional proceeding.

1. We do respectfully submit that the questions which we present are in urgent need of decision by this

Court and that the opinion below unless reversed establishes a precedent which will greatly impede the legitimate use of the interlocutory injunctive process not only under the National Labor Relations Act but also under the Civil Rights Act of 1957 (42 U.S.C. 1971(c) and of 1964 (42 U.S.C. 2000a-3(a)) and at least 23 other federal statutes which expressly provide for the issuance prior to any final decision on the merits by either administrative agency or a court of temporary injunctions or other interlocutory relief in aid of the enforcement of federal law. See Appendix A, *infra*, p. 1a, *et seq.* Because interlocutory relief is usually decided by a district judge, and because few of these causes ever reach an appellate court, the unreversed opinion of the Court of Appeals for the Second Circuit in this case has an unusually far-reaching impact.

Most of the statutes which we have collected were repeatedly relied upon during the debates in Congress on the bill which became the Civil Rights Act of 1957 (103 Cong. Rec. 5764-5765) and again during the debates on the Civil Rights Act of 1964 (110 Cong. Rec. 6783-6784, 6802).[6] Senator Morse, who introduced the amendment which became Section 10(j) of the National Labor Relations Act as amended in 1947 (93 Cong. Rec. 1846, 2 Legis. Hist. LMRA 1947, p. 985), during the debates on the Civil Rights Act of 1964 listed the provisions of the National Labor Relations Act along with similar provisions in other federal statutes as affording a precedent which should be followed (110 Cong. Rec. 6784).

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[6] A list of 40 such statutes appears in the House Rept. No. 914, 88th Cong., 1st Sess. Report of House Judiciary Committee on H.R. 7152, Additional Views of Hon. George Meader, reprinted BNA, Incorporated, The Civil Rights Act of 1964, Legislative History, pp. 181-183.

Under each of the Civil Rights Acts the district courts have issued preliminary injunctions which could by no stretch of the imagination be deemed to maintain the status quo since restaurants who had never served Negroes were required to serve them[7] and registrars who had never registered Negroes were required to register them.[8] Federal Courts have similarly used preliminary injunctions to require admission of Negro pupils to theretofore all white schools.[9]

Under various of the Securities and Exchange Commission statutes, six of which expressly authorize interlocutory injunctive relief upon application of the SEC,[10] preliminary injunctive relief has been used to require publication of scalping practices,[11] and to cancel proxies,[12] neither of which can be deemed a mere preservation of the status quo *pendente lite.*

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[7] E.g. *Lance* v. *Plummer,* 5th Cir., 1965, 353 F. 2d 585, reciting issuance of preliminary injunctions by district court.

[8] E.g., *U.S.* v. *Logue,* 5th Cir., 1965, 344 F. 2d 290, 291, 293, reversing the district court for refusal to issue a preliminary injunction.

[9] *Carr* v. *Montgomery County Board of Education,* D.C.M.D. Ala., 1964, 232 F. Supp. 705; *Harris* v. *Gibson,* 5th Cir., 1963, 322 F. 2d 780, 782, certiorari denied, 376 U.S. 908; *Stell* v. *Savannah-Chatham County Board of Education,* 5th Cir., 1963, 318 F. 2d 425, 428, certiorari denied, 376 U.S. 908.

[10] *Security Exchange Act* of 1934, 15 USC § 78u(e); *Securities Act* of 1933, 15 USC 77t(b); *Investment Advisors Act* of 1940, 15 USC § 80b-9(e); *Investment Act* of 1940, 15 USC § 80a-41(e); *Public Utility Holding Company Act* of 1935, 15 USC § 79r(f); *Trust Indenture Act* of 1939, 15 USC § 77uuu(a).

[11] *SEC* v. *Capital Gains Bureau,* 375 U.S. 180, 182-184, 192-193 (1963).

[12] *SEC* v. *May,* S.D.N.Y. 1955, 134 F. Supp. 247, 258, affirmed, 2d Cir., 1956, 229 F. 2d 123, 55 A.L.R. 2d 1123. *SEC* v. *O'Hara Re-election Committee,* DCD Mass. 1939, 28 F. Supp. 523, 524, 525.

Numerous injunctions issued over the years under Section 10(j) have failed to meet the test of doing no more than preserving the status quo. Employers who have never bargained with any union have been required to bargain.[13] Employers engaged in bargaining with one union have been required to bargain with a different union.[14] Unions who had always bargained with individual employers have been required to bargain with an association.[15] A union was required by preliminary injunction issued under Section 10(e) to bargain with an association committee containing as one of its members a former confidential employee of the union.[16]

In none of these cases arising under the National Labor Relations Act or other statutes has there been imposed any requirement that a substantial impact on the public interest be shown. Indeed, where the issue respecting the need to show irreparable injury was raised, the courts have held that where the statute provided for interlocutory relief in aid of enforcing a federal statute there was no need to show irreparable

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[13] E.g., *Reynolds* v. *Curley Printing Co.*, D.C. M.D. Tenn. 1965, 247 F. Supp. 317; *Haban* v. *Connecticut Foundry Co.*, 62 L.R.R.M. 2139.

[14] *Madden* v. *Cargill, Inc.*, D.C. N.D. Ill. 1952, 30 LRRM 2459.

[15] *Madden* v. *U.M.W.*, D.C. D.C., 1948, 79 F. Supp. 616, 619; *Elliott* v. *Local 49, Sheet Metal Workers*, D.C. N.M. 1958, 34 *CCH Lab. Cas.* ¶ 71,553.

[16] *NLRB* v. *ILGWU (Slate Belt Apparel Contractors)*, 3rd Cir., 1959, 44 LRRM 2003, see also 274 F. 2d 376, 377, n. 2, 78 ALR 2d 763.

damage,[17] apparently on the theory that denial to any person of his rights under the statute while the case was being held in the merits in and of itself constituted irreparable damage.[18]

In *SEC* v. *Capital Gains Bureau,* 375 U.S. 180 (1963) this Court reversed a decision by the Second Circuit in which the Second Circuit affirmed the district court's denial of a preliminary injunction on the ground the SEC had not yet decided the substantive issues involved (300 F.2d 745, 751), that the SEC had selected a rather small advising service against which to secure a preliminary injunction (300 F.2d 745, 751) and that no irreparable injury had been established (300 F.2d at 745). In reversing and holding that a preliminary injunction, essentially affirmative in its effect and requiring practices of disclosure never before required, should have issued, this Court devoted its opinion entirely to the substantive issues of law and did not expressly rule on the procedural issues relevant to the use of preliminary injunctive relief. Nevertheless, this Court by implication rejected the principles applied again in this case by the Second Circuit.

Courts have already begun denying preliminary injunctions, relying on the decision below as a precedent. For instance, in *Greene* v. *A.G. Pollard Co.,* 54 L.C.,

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[17] *Hoban* v. *Connecticut Foundry Co.,* D. Conn. 1966, 62 LRRM 2139, 2140-2141; *SEC* v. *Torr,* 2d Cir. 1937, 87 F. 2d 446-450; *U.S.* v. *Brown Shoe Co.,* 1956 Trade Cas. 68,244 at p. 71114; *SEC* v. *General Security Co.,* S.D.N.Y. 1963, 216 F. Supp. 350, 352; *U.S.* v. *Chrysler Corp.,* D.N.J. 1964, 232 F. Supp. 651-657.

[18] Compare *Harris* v. *Gibson,* 5th Cir., 1963, 322 F. 2d 780, 782, certiorari denied, 376 U.S. 908.

¶ 11,477, the United States District Court for the District of Masachusetts on September 15, 1966, denied a preliminary injunction requested by the Labor Board to require an employer to bargain collectively. The district court relied upon the fact that "this controversy affects only a very small segment of the retail store industry and, much more importantly, the Board has indefinitely continued its determination of the merits of the controversy", citing and quoting from the decision below in the instant case respecting the lack of necessity to preserve the status quo, the failure to prove irreparable damage and the Board's abdication of its functions by applying to a court for an injunction before itself determining the case.

It is apparent that Congress has adopted on a wide scale the device of a preliminary injunction as a means of securing effective, immediate implementation of federal statutes. This Court has never laid down in clear, unmistakable terms the governing principles with respect to status quo, irreparable injury, delays in handling of the proceedings before the administrative agency, and impact on the public of denying an injunction. Such a decision is badly needed. The present case furnishes an excellent occasion for review of these issues by this Court.

2. The absence of any opinions by this Court explicating the applicable principles is, we believe, due not to any uncertainty on the part of this Court about the answers to any of the questions presented, but rather because this Court has assumed these principles were so well understood as not to need explication. For instance, the position that new issues should not be decided on an application for preliminary injunction and certainly not ahead of a decision by the adminis-

trative agency itself, upon which the district court and court of appeals relied, along with change of status quo and absence of irreparable injury, in denying a preliminary injunction in *SEC* v. *Capital Gains Bureau,* 191 F. Supp. 897, affirmed 2d Cir., 300 F.2d 745, 746, 751 (Clark dissenting) affirmed *en banc* by a 5 to 4 vote, 306 F.2d 606, was reversed *sub silentio* by this Court. 375 U.S. 180.

There can, we believe, on the basis of all the precedents, be no doubt but what the district court in the instant case did no more than follow applicable law in issuing the preliminary injunction and that the court of appeals erred in reversing. None of the bases of the court of appeals' decision find any support in the law applicable to preliminary injunctions nor in the statutory scheme adopted by Congress for the Labor Board and the courts jointly to enforce the labor policy enacted.

Even in applications for preliminary injunctions not resting on a statutory basis, there is no hard and fast rule that a preliminary injunction will not be used to change the status quo. For instance, preliminary injunctions are issued to grant specific enforcement of the affirmative obligations of a new contract, where delay would render the contract a nullity.[19] Preliminary injunctions may properly be used to create "a status which should have existed."[20] and of

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[19] *Rose* v. *Brown,* 1945, 186 Misc. 553, 556, 560, 58 N.Y.S. 2d 654, 656, 660.

[20] *Vicksburg, S. & P. Ry. Co.* v. *Webster Sand, Gravel & Const. Co.,* 1943, 132 La. 1051, 62 So. 140, 143-144, 47 LRA n.s. 1155. Cf. *Codept. Inc.* v. *More-Way Work Corp.,* 1964, 23 Wis. 2d 165, 127 N.W. 2d 29, 34; *Graham* v. *Bd. of Supervisors,* 1966, 49 Misc. 2d 459, 267 N.Y.S. 2d 383, 385, 388, Modified 25 A.D. 2d 250.

course under federal legislation providing for the use of preliminary injunctions to secure compliance with the law *pendente lite*, injunctions creating a legal status have issued, where the status quo was an illegal status.[21]

Nor is it clear that under traditional equity principles the preliminary injunction issued by the district court did anything but preserve the status quo. The status quo had been a bargaining relationship between GE and IUE. GE broke this relationship off because it did not like the constituency of the IUE's committee. The order did no more than require GE to bargain with the IUE committee as it had always done in the past. Never in the past had GE asserted any right to supervise who was to serve on the IUE committee.

A preliminary injunction requiring employees to interchange freight with strikebreakers, has been regarded as continuing the status quo respecting freight handling. That earlier the freight coming from the struck road required only dealing with fellow union members whereas the preliminary injunction required dealing with strikebreakers, was not regarded as creating a new status. See *In re Lennon,* 166 U.S. 548, 549-550, 556 (1887); *Toledo A.D. & N.M. Ry. Co.* v. *Pa. Co.,* 1893, 54 Fed. 730, 741 (per Taft, C.J.)

This Court has often decided new and novel issues of substantive law in determining whether a preliminary injunction should issue.[22] However here the point of

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[21] See cases cited notes 13, 14, 15, and 16, *supra.*

[22] *Texas & New Orleans Railroad Co.* v. *Bro. of Ry. & Steamship Clerks,* 281 U.S. 548, 555-556 (1930), the first injunction under the Railway Labor Act; *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579 (1952), enjoining the President's seizure of steel plants; *SEC* v. *Capital Gains,* 375 U.S. 180, 182, 183, 184, 192-193 (1963), the first judicial decision that investment advisers must disclose scalping practices to subscribers.

law determinative of the substantive issues of whether GE committed an unfair labor practice is in no respect novel. As the district court pointed out, the Sixth Circuit's 1963 holding in *Standard Oil Co.* v. *N.L.R.B.*, 322 F.2d 40, "rejected an employer position indistinguishable in principle from the one pressed here" and the decision of the district court in the instant case in deciding that GE committed an unfair labor practice "closely follows the rationale" of the Sixth Circuit's *Standard Oil* case (Op. R.668a).

Similarly, as the opinion of the district court also makes plain (Op. R.666a-668a) the *American Radiator* decision by the Board and the *Standard Oil* decisions by the NLRB and the Sixth Circuit, were themselves nothing novel but rather an obvious application of the express language of the statute, and uniform holdings of the Board and the courts throughout the years the National Labor Relations Act has been the law of the land, that on each side of the bargaining table representatives chosen either by the employees or by the employers respectively must be accepted by the other side without veto or question. The Board has considered innumerable cases in which employers have refused to bargain because of some objection they had to the personnel whom the union brought to the bargaining table to represent employees, often an objection that the representatives came from a union other than the one certified.[23] Similarly, unions on occasion

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[23] E.g., *Pacific Olive Co.*, 1942, 46 NLRB 5, 9, 12 (employer must meet with union committee including representative from Central Labor Council); *Deena Artware, Inc.*, 1949, 86 NLRB 732, 733, 747-750, enforced 6th Cir. 1952, 198 F. 2d 645-650-651 (employer must bargain with organizer employed by AFL to service AFL affiliates); *The Oliver Corp.*, 1947, NLRB 483, 484 (employer must bargain with international representative whom employer found

have objected to meeting with an employer committee including a lawyer or a labor relations consultant whom they have encountered representing other employers and deem unfair to labor.[24] In no reported case which we have been able to find has the Board ever dismissed a complaint alleging a refusal to bargain by either an employer or a union, on the basis that any individual who appeared as part of a negotiating committee warranted the refusal to meet with him.

In only two cases have the courts set aside Board orders in such cases—once where an employer was the respondent[25] and once where a union was the respondent.[26] Both cases turned on peculiar limited facts and afforded not the slightest basis for predicting that either the Board or the courts will refuse to find GE guilty of an illegal refusal to bargain.

Indeed, in cases brought under Section 10(j) of the National Labor Relations Act, no application can be made to a district court for an injunction unless the Labor Board itself authorizes the application. Because the Board itself must make the decision as to

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objectionable on the theory that the employer would thereby be compelled to bargain in a combined unit of factory and officer workers because the same international represented both units; *Sears Roebuck & Co., Inc.*, 1962 ,139 NLRB 471, 475 (employer must meet with committee including international representative of union). See annotation: Right to bargain with particular agent selected by opposing party, under National Labor Management Relations Act, 78 ALR 2d 768-775.

[24] E.g., *Local 294, Intl. Bro. Teamsters (K.C. Refrigeration Transport Co.)*, 1960, 126 NLRB 1, 2, 4 enforced 2d Cir., 1960, 284 F. 2d 893; *Southern California Pipe Traders (Paddock Pools)*, 1958, 120 NLRB 250, 261.

[25] *NLRB* v. *Kentucky Utilities Co.*, 6th Cir., 1950, 182 F. 2d 810, 813-814.

[26] *NLRB* v. *ILGWU (Slate Belt Apparel Contractors Association)*, 3rd Cir. 1960, 274 F. 2d 376, 78 ALR 2d 763.

whether interim relief will effectuate the policies of the Act before each Section 10(j) proceeding is initiated, such proceedings come before the Court bearing a governmental determination on policy issues. Section 10(j) requires that applications for interim relief under its provisions be made by the Board (29 U.S.C. 160(j). Section 10(1), on the other hand expressly requires application under its provisions to be made "if, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue" (29 U.S.C. 160(1)

The Board in its delegation of powers to the General Counsel expressly limited his power to apply for injunctions under Section 10(j) so as to require the submission of each case to the Board for its approval before the General Counsel had the power to apply. Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the NLRB effective April 1, 1955 (20 F.R. 2175), as amended August 12, 1959, 24 F.R. 6666), as amended April 28, 1961 (26 F.R. 3911, 4080). The Memorandum as now effective can be found printed in full in CCH Lab. Rel. Rep. Paragraph 1120.01 and BNA-LRX 4201.

This Court in *Garner* v. *Teamsters Union,* 346 U.S. 485, 489-490 (1953), relied upon the availability of injunctive relief pending Board determination as indicating Congressional intent to preempt all remedies for acts constituting unfair labor practices. There this Court cited (346 U.S. at 490, n. 6), as illustrative of the relief afforded in the district courts, *Madden* v. *U.M.W.A.,* 79 F. Supp. 616. In that case a preliminary injunction affirmative in character issued requiring the union to bargain with an association with which the

union had never dealt because the union believed it could properly deal with individual employers. All the issues decided by the circuit court below in the instant case were present at least impliedly in that case and were decided in the opposite manner.

3. The legislative history and statutory scheme of the National Labor Relations Act indicate that Congress intended the courts to grant preliminary injunctions in Section 10(j) proceedings where needed to secure effectuation of the statute without limiting the use of that section to unusual or emergency situations. Section 10(j) was offered as an amendment by Senator Morse to eliminate the one-sided character of the statute which resulted from Section 10(l) which made it mandatory on the regional staff of the Board to apply to the district court for a preliminary injunction in all secondary boycott cases, regardless of the impact upon the public and without first obtaining any approval from the Board itself as distinguished from its regional staff. In affording a discretionary right to the Board itself to apply for preliminary injunction in other cases, Congress certainly had no intent to make the Board's discretionary powers narrower than the mandatory command to proceed in every case of a union violation of Section 8(b)(4)(A), That the Congressional intent was for a far wider utilization of the Section 10(j) injunction that has heretofore occurred is evident from the report of a subcommittee of a committee of Congress criticizing the Board for not making greater use of Section 10(j).[27] In this report this subcommittee stated (at p. 1):

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[27] Report of Subcommittee on NLRB of the House Committee on Education and Labor, Administration of the Labor-Management Relations Act by the NLRB, 87th Cong., 1st Sess., pp. 1-3 (Committee Print, September 1961).

"The subcommittee finds that in many areas and in many industries, the policy of the United States as set forth in the Labor Management Relations Act of 1947—to encourage the practice and procedure of collective bargaining—is not being effectuated. Despite over 25 years of statutory prohibition and widespread publicity, the number of unfair labor practices grows, rather than diminishes, and at an alarming rate . . ."

And again (at p. 2):

". . . a partial reason for the caseload, and hence the delay in unfair labor practice cases, lies in the inadequate remedies of the Labor Board. Labor Board orders constitute in many situations no more than a 'slap on the wrist.' They are both too little and too late. They constitute, in the words of one witness, 'a license fee for union busting' . . ."

With respect to a remedy, this report stated (at p. 3):

". . . Nevertheless, this subcommittee finds that injunctions are now utilized extensively against union activities and to an almost nonexistent extent against employer unfair labor practices. Failure to utilize the 10(j) discretionary injunction often results in irreparable injury. This subcommittee, therefore, recommends that the Labor Board gave careful consideration to greater utilization of the 10(j) injunction in situations when unfair labor practice charges are filed and the Board finds reasonable cause to believe that such unfair labor practice is continuing and will be continued unless restrained, and will cause irreparable property or personal injury or injury to the exercise of rights guaranteed by section 7. Illustrative are the situations of flagrant and aggravated acts of picket line force and violence, the situations of repeated discharge of union adherents, and situations where employers or unions flagrantly refuse to bargain in good faith, and the

situations wherein the employer threatens to intimidate his employees by closing the plant or shifting work to affiliated factories."

For the manner in which the delays of the Board in securing any relief against refusals to bargain have frustrated the effectuation of the Act see Philip Ross, The Government as a Source of Union Power, Brown University, 1965, pp. 257-260.

In this setting the disastrous effect of the decision below on the development of the law is not difficult to predict.

The instant decision below will hinder on a wide spread basis the Board in carrying out its directions from Congress and deprive employees of effective protection while cases are processed by the Board.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a writ of certiorari be granted and that the judgment below be reversed with the direction to affirm the preliminary injunction issued by the district court.

Respectfully submitted,

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November 14, 1966

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APPENDIX A

The following Federal statutes expressly authorize the use of a temporary injunction to compel compliance with the statute prior to, and pending, a decision on the merits by either an administrative agency or a court:

Antitrust laws, application to be made by U.S. attorney under direction Attorney General, 15 U.S.C. 4, July 3, 1890.

Atomic Energy Act, enjoining violation of act or regulation—by Atomic Energy Commission by Attorney General, 42 U.S.C. 2280, as amended August 6, 1956.

Civil Rights Act of 1957, Attorney General may ask for injunctive relief to prevent illegal practices relating to voting rights, 42 U.S.C. 1971(c), September 9, 1957.

Civil Rights Act of 1964, any person aggrieved by violation of public accommodations sections may apply, 42 U.S.C. 2000a-3(a), July 2, 1964.

Clayton Act, application to be made by U.S. attorney under direction of Attorney General, 15 U.S.C. 25, October 15, 1914.

Defense Production Act, 50 U.S.C. appendix 2109, July 31, 1951.

Electric utility companies, application to be made by Federal Power Commission, 16 U.S.C. 825m, (a), August 26, 1935.

False advertisements, dissemination enjoined by Federal Trade Commission, 15 U.S.C. 53, March 21, 1938.

Flammable Fabrics Act, to enjoin violation by Federal Trade Commission, 15 U.S.C. 1195, June 30, 1953 (a).

Fur Products Labeling Act, to enjoin violation by Federal Trade Commission, 15 U.S.C. 69g, (b) (2), August 8, 1951.

Import trade, prevention of restraint by injunction by U.S. attorney, under direction of Attorney General, 15 U.S.C. 9, August 27, 1894.

Investment Act of 1940, violation of statute or rules, regulation, or orders of SEC by investment companies, enjoined by Securities and Exchange Commission, 15 U.S.C. 80a-41(e) August 22, 1940.

Investment Advisers Act of 1940, violations of statute, rules and regulations governing, enjoined by Securities and Exchange Commission, 15 U.S.C. 80b-9(e), August 22, 1940.

National Housing Act, injunction against violation by Attorney General, 12 U.S.C. 1731b.

National Labor Relations Act (Taft-Hartley Act), 29 U.S.C. 160(j) and (L), June 23, 1947.

Natural Gas Act, 15 U.S.C. 717s, June 21, 1938.

Public Utility Holding Company Act of 1935, 15 U.S.C. 79r(f), August 26, 1935.

Rent Control Statute, 50 U.S.C. 1896, March 30, 1949.

Securities Exchange Act of 1933, actions to restrain violations by Securities and Exchange Commission, 15 U.S.C. 77t(b), May 27, 1933.

Securities Exchange Act, restraint of violations by Securities and Exchange Commission, 15 U.S.C. 78u, June 6, 1934.

Small Business Investment Act Amendments of 1961. Injunctive relief is authorized to restrain violations, 15 U.S.C. 687c (a), October 3, 1961.

Textile Fibre Products Identification Act, Federal Trade Commission may seek injunctive relief to restrain unlawful acts, 15 U.S.C. 70f, September 2, 1958.

Trust Indenture Act of 1939, 15 U.S.C. 77uuu (a), August 3, 1939.

Welfare and Pension Plans Disclosure Act Amendments of 1961. Injunctive relief to enjoin improper acts or practices. 29 U.S.C, 308(f), March 20, 1962.

Wool products, enjoining violation of Labeling Act by Federal Trade Commission, 15 U.S.C. 68e, October 14, 1940.

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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

October Term, 1956

IVAN C. MOLOAT, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

GENERAL ELECTRIC COMPANY, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MEMORANDUM OF [illegible] INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, IN REPLY TO MEMORANDUM OF RESPONDENTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 645

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

GENERAL ELECTRIC COMPANY, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MEMORANDUM OF RESPONDENT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, IN REPLY TO SUGGESTION OF MOOTNESS

The respondent, General Electric Company, in its memorandum in opposition to the petition for certiorari, has urged that the petition should be dismissed on the ground of mootness (Memorandum of GE, pp.

11-12). GE's position is based upon the erroneous assumption that this proceeding is limited to the negotiation of a national collective bargaining agreement between IUE and GE in 1966 and that once this agreement had been reached the case became moot (Memo of GE, pp. 1, 11). We respectfully submit that this is not correct. The facts hereinafter detailed establish that this proceeding has never been so limited. The temporary injunction entered by its terms requires GE in its continuing bargaining relationship with IUE and its constitutent locals to respect the right of IUE and its constituent locals to ultilize representatives of other unions as representatives of IUE and its constituent locals. GE's adamant refusal to respect IUE's rights in this regard may well give rise to continued violations of the rights of its employees to bargain collectively through representatives of their own choosing during the period prior to the completion of the administrative proceedings before the Labor Board and enforcement or review proceedings unless the temporary injunction remains in full force and effect pending final disposition of the Labor Board's case.

1. Paragraph (a) of the temporary injunction (pet. p. 67) enjoins and restrains GE from:

> "Failing or refusing to meet, confer and bargain collectively in good faith with International Union of Electrical, Radio and Machine Workers, AFL-CIO (IUE) and its constituent locals, by declining to meet with the selected representatives of IUE and its constituent locals because of the presence of any representatives of other unions whom IUE and its constituent locals have invited to attend for the purpose of participating in the discussion and advising or consulting with IUE and its constituent locals;"

While paragraph (b) enjoins and restrains the refusal only with respect to the negotiation of the 1966 National Agreement, the provisions of paragraphs (a) and (c) constitute an injunction unlimited as to time or occasion. There, thus, can be no doubt that on the face, only paragraph (b) has become moot. The other two paragraphs as written apply to all future bargaining and all future meetings between GE and the IUE or any of its constituent locals which the law requires or which the parties voluntarily enter upon pending final disposition of the proceedings instituted by IUE's charge filed with the Labor Board on May 9, 1966.

2. The Committee on Collective Bargaining, its Steering Committee and the expanded IUE Negotiating Committee are all still in existence and are making plans to continue the coordination between the eleven unions with respect to issues left open by the national collective bargaining agreement and with respect to other issues which call for meetings between the IUE Negotiating Committee and GE during the term of the contract and between the local negotiating committees and GE.

In announcing the agreement reached between GE and IUE on October 14, 1966, AFL-CIO President George Meany included in his announcement the statement that the eleven unions "intend to continue and broaden our united activities in the coming months, both in the handling of problems during the life of the agreement and in preparation for the negotiations three years from now". A copy of President Meany's statement is printed at the end of this Memorandum as Appendix A, *infra,* pp. 1a-2a.

On October 28, 1966, two days after the final signing of the 1966-1969 IUE-GE Agreement, the next meeting

of the cooperating unions was announced. We attach as Appendix B, *infra,* pp. 3a-4a, a letter dated October 28, 1966, on the letterhead of the Committee on Collective Bargaining from David Lasser, Chairman, to Members of the Steering Committee, announcing a meeting for November 18, 1966, and listing as one of the items to be discussed a campaign to help southern and rural locals in the GE chain to get increases which would remedy geographic wage differentials.

As was found by the district court in this case (R. 643a-644a) and as is shown by the Board's decision in *Matter of General Electric,* 1964, 150 NLRB 192, 205-206, there are really two levels of collective bargaining between IUE and GE, the national level and the local level. The IUE, as distinguished from its locals, is the certified bargaining representative in fifty of the local units as well as in the national unit (R. 25a, 643a).

Article XXI of the 1963-1966 IUE-GE National Agreement, which is in the record here (Bd. Exh. 3, p. 66, facing R. 492a admitted in evidence, R. 44a), and was not in this respect changed in any way by the 1966-1969 IUE-GE contract, expressly provides that local supplements shall be negotiated during the life of the National Agreement. The district court described the local agreements "as additions to, not variations from, the National Contracts" (R. 644a).

During the 1966-1969 negotiations the IUE requested GE to negotiate the local supplements, most of which were and are, open for renegotiation either because not for a fixed term or because they were terminated by notices given pursuant to Section 8(d) at the same time as the notices to terminate the National IUE-GE Agreement on October 2, 1966, were given. IUE

pointed out to GE that if these local issues were settled before a national agreement was signed, GE would not be plagued by many local strikes following the signing of the National Agreement. GE refused, insisting on the continuance of the practice of past years, where the National Agreement is signed first, leaving for bargaining thereafter lower level issues, all of which by contract (see Article XIII, par. 2(c), pp. 53-54 and Article XXI, p. 66, of Bd. Exh. 3, facing R. 492a) require national IUE agreement, irrespective of whether the local or the IUE is the certified bargaining agent. Hence the signing of the National Agreement in nowise completes the present round of negotiations between IUE and GE.

The past practice between GE and IUE, not changed by the new contract, is to process as grievances wage inequity claims with national handling at the third level (Article XIII, Par. 2(a), pp. 53-54 of Bd. Exh. 3 facing R. 492a) with the full right to strike if the grievance is not settled by negotiation between GE and IUE (Article XIV, pp. 54-55 of Bd. Exh. 3, facing R. 492a). A copy of the pertinent provisions of the 1966-1969 GE-IUE contract is attached hereto as Appendix C, pp. 4a-5a, *infra*.

It is on the basis of these provisions in the National IUE-GE contract and in the setting of GE's insisting on leaving these issues open for negotiation with IUE following the signing of the National 1966-1969 Agreement that the Memorandum of October 28, 1966 states that with respect to the GE chain "This question of wage differentials remains an open matter that ought to be settled through our coordinated activities" (Appendix B, *infra*, p. 3a) The IUE plans to place repre-

sentatives from other unions on the IUE local committees for negotiating local issues.

The duty to meet and bargain imposed by Section 8(a)(5) of the statute includes the duty to meet to negotiate problems arising in the administration of the contract, including specifically the handling of grievances. See for instance *Carroll's Transfer Co.*, 56 NLRB 930, 937. Since the contract between GE and IUE provides for national agreement to local supplements and national handling at the third level of the grievance machinery, the same duty is imposed on GE to meet and negotiate with IUE through whomsoever IUE wishes to name as its representatives, with respect to reaching agreements on local supplements and in grievance handling as with respect to negotiating a new national agreement.

3. The record in the instant case shows the cooperative effort of IUE and the other unions representing employees of GE in connection with the negotiation of national agreements between IUE and GE in 1960 and 1963 (R. 181a, 184, 186a-188a). The Board's decision in *Matter of General Electric Co.*, 1964, 150 NLRB 192, 210, finds that

> "In late 1959, the IUE and four other member unions of the AFL-CIO Industrial Union Department representing bargaining units in the GE chain formed a loose coalition for the purpose of exchanging information and coordinating certain other activities related to the 1960 negotiations."

The fact is that over the years IUE has participated in various forms of coordinated activity with these other unions in an effort to meet GE's playing of these unions off against each other as described by the District Court in the instant case (R. 646a).

4. Issues often arise during the term of the contract which call for negotiation of new national provisions. The record here discloses that upon the enactment of the Social Security Act Amendments, including Medicare, in the summer of 1965, the IUE and the other cooperating unions, then seven in number, sought to meet with GE to negotiate with respect to the unilateral changes GE had announced, including GE's plan to deduct from pensioners who did not sign up for Medicare all the benefits which such pensioners would have received had they so signed up and to unfairly penalize those affected by the change in the Social Security Act as to taxed wages from $4,800 to $6,600 (R. 424a-427a). GE refused to meet with the unions other than IUE stating in its letter of refusal that GE did not bargain with the other seven unions on a national basis (R. 428a). GE did meet with the IUE Negotiating Committee and listened to their objections to GE's unilaterally announced changes to meet the changed law. GE refused to negotiate with IUE on the ground that the insurance and pension contract was not open until 1968 (R. 428a). Nevertheless GE did alter its unilaterally announced plan by changing the arrangements so as to dovetail the supplementary Medicare provisions into the GE plan in a manner not quite as harsh as the originally announced plan.

After the preliminary injunction issued below, GE not only met with the IUE committee expanded to include representatives of eleven unions but also did negotiate changes in the pension and insurance agreement between IUE and GE despite the fact that agreement by its terms was not open for renegotiation until 1968. This illustrates how issues may arise at any time during the term of a contract.

Should GE decide to subcontract work normally performed in the unit, or to shut down a department or a plant or to change to automation, GE would be under an obligation to give notice to the IUE or the appropriate constituent local or locals and bargain collectively as to the effects of its proposed changes upon the employees represented by IUE. The IUE and its constituent locals are entitled by law to have representatives of other unions serve on their committees and the preliminary injunction below is necessary to assure the employees IUE represents of their rights in this regard until the complaint case before the Board results in an order of enforcement in the Court of Appeals.

5. It has been the practice, over the years, of GE and the IUE Negotiating Committee to meet from time to time during the term of their National Agreement to discuss problems of mutual interest with respect to the administration of the contract or new matters which have arisen. Such meetings were held on May 28, 1962, December 12, 1962, April 29, 1963, February 26, 1964, November 16, 1965, and February 7, 1966.

The agreement of GE to hold such periodic meetings with the IUE Negotiating Committee was contained in a letter from Philip D. Moore, Manager of Employee Relations Service for GE to John H. Callahan, Chairman of the National GE Conference Board of IUE, a copy of which is attached hereto as Appendix D, *infra,* pp. 6a-7a. A copy of the IUE's reply thereto, being a letter dated April 26, 1962, from Callahan to Moore is attached hereto as Appendix E, *infra,* pp. 7a-8a. A copy of the minutes of the resulting meeting held May 29, 1962, is attached hereto as Appendix F, *infra,* pp. 8a-22a. A copy of the account of

this meeting as carried in GE's house organ for the employees at its Pittsfield, Massachusetts plant, the Pittsfield General Electric News of June 8, 1962, is attached hereto as Appendix G, *infra,* pp. 22a-25a. Copies of the minutes of meetings held between GE and the IUE Negotiating Committee on December 12, 1962, and February 26, 1964, are attached as Appendices H and I respectively, *infra,* pp. 26a-44a.

While these documents suggested that GE takes the position that it is not legally required to so meet with the IUE Negotiating Committee, a matter which IUE disputes, there can be no question but what the law protects IUE and its members in their right to select the representatives it sends in as its committee when such meetings take place. The preliminary injunction should be continued in effect to protect IUE's right in this regard. Otherwise these necessary meetings will not take place, employees and the public will lose the advantages of this important collective bargaining, and strikes and industrial unrest may result before the complaint proceedings pending before the Labor Board result in a decree of the Court of Appeals providing for a permanent injunction in the place of the preliminary injunction below.

6. The history of Labor Board cases involving GE furnishes additional reason for not dismissing the case as moot. The unfair labor practices cases arising out of the 1960 and 1963 negotiations have neither one yet reached the stage of a court order enforcing a Board order. Unfair labor practice charges, alleging among other things that the Boulware technique of playing the unions off against each other to obtain acceptance of terms unilaterally devised by GE constituted a violation of Section 8(a)(1) and (5), were filed as to both the 1960 and 1963 negotiations. The Board sus-

tained these charges as to the 1960 negotiations in *Matter of General Electric,* 152 N.L.R.B. 92, now pending in the United States Court of Appeals for the Second Circuit upon the Labor Board's petition for enforcement and GE's petition for review.[1] Both the IUE and the Steelworkers filed charges alleging that GE's similar application of its Boulware techniques in the 1963 negotiations constituted an illegal refusal to bargain in good faith (NLRB Case No. 2-CA-9587). These charges are still pending undecided before the Labor Board. There is hence no basis for vacating the preliminary injunction here as at the present time moot. If we are to judge by these prior proceedings all sorts of occasions for meeting, possibly even negotiating the 1969 contract, may arise before the final disposition of the present proceedings before the Board by a final decree in the appropriate Court of Appeals.

7. The orderly administration of Section 10(j) requires that no hiatus in protection by court order occur in the period between the original entry of a preliminary injunction and the entry of a permanent order by the Court of Appeals upon the enforcement or review proceedings which constitute the final disposition of the complaint case pending before the Board. Certainly, in the area of securing employees their right

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[1] The District Court in the instant case took judicial notice of these prior Board proceedings (R. 143a). The right of the IUE to intervene in the review and enforcement proceedings in the Court of Appeals and to file its own petition for review was before this Court in *International Union of Electrical, Radio and Machine Workers,* v. *NLRB,* 382 U.S. 366, granting certiorari, vacating and remanding orders entered by the United States Court of Appeals for the Second Circuit without opinion which denied intervention and dismissed IUE's petition. The refusal of the Court of Appeals after remand to permit IUE to maintain review proceedings, 358 F.2d 292, led to the petition for certiorari in No. 341, this Term, which was denied October 17, 1966.

to bargain collectively through representatives of their own choice, the preliminary injunction protecting those rights cannot be moot unless the union becomes decertified or the employer relents. GE here is as adamant as ever in denying its employees the right to bargain through representatives of their own choosing. The preliminary injunction is not moot.

8. In the petition for certiorari filed by IUE to review the judgment below, No. 774, this Term, we have shown how disastrous to continued use of the Section 10(j) procedure to secure employer compliance the continued validity of the Court of Appeals opinion in this case, may well become. We therefore urge that this Court grant the writ in the instant case and review. If for any reason we have not convinced this Court that the case is not moot, we urge the Court to exercise its inventive powers to vacate the decision below with an opinion making it clear that the opinion below cannot properly be relied upon by the Board in declining to petition courts under Section 10(j) or by courts in considering petitions filed under Section 10(j).

Respectfully submitted,

IRVING ABRAMSON
15 East 41st Street
New York, New York

RUTH WEYAND
1126 - 16th Street, N.W.
Washington, D. C.

Attorneys for International Union of Electrical, Radio and Machine Workers, AFL-CIO, Respondent

November 16, 1966

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APPENDIX

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APPENDIX A

NEWS FROM THE AFL-CIO NA. 8-3870

For Immediate Release, Friday, October 14, 1966

STATEMENT BY AFL-CIO PRESIDENT GEORGE MEANY FOR THE AFL-CIO COMMITTEE ON COLLECTIVE BARGAINING

An agreement reached today with General Electric represents a major accomplishment for collective bargaining with that corporation. The benefits included in the agreement are substantially better than the original offer by General Electric on September 14.

Credit for these advances is due primarily to the unity established among our 11 unions and to the determination of their membership. We offer our thanks to the President's panel for their patient and constructive help in bringing the parties together to effect this settlement.

While great advances were made in a number of important fields, neither the unions nor the President's panel were able to move General Electric on one vital issue—the solution of disputes during the life of the contract. The company absolutely refused to agree to arbitration of many disputes that could end in strikes affecting vital defense and non-defense production. Under the present circumstances, which the company flatly refuses to alter, the only recourse open to workers with unresolved grievances during the term of the contract is to strike. The attitude of the company provokes such strikes. This attitude separates General Electric sharply from that of three-fourths of American industry which accepts the principle of arbitration of disputes as a way of life.

We intend to act responsibly on handling disputes in defense and non-defense work and to exercise fully the right to strike if this becomes necessary to protect our membership.

The full responsibility for such strikes will lie entirely upon the shoulders of General Electric.

The present refusal of GE to join with us in reducing the growing unjust area wage differentials will only intensify our determination to secure effective action.

Eliminating wage discrimination against southern and rural workers remains high on the agenda of our activities from this point on.

We intend to continue and broaden our united activities in the coming months, both in the handling of problems during the life of the agreement and in preparation for the negotiations three years from now.

The next order of business is to give help in every way possible to the membership of unions that deal with the Westinghouse corporation. These employees and the unions have a right to expect that Westinghouse will deal with its employees fairly in genuine collective bargaining to effect a speedy and adequate settlement.

If negotiations fail to secure an agreement that our membership can accept, the unions that deal with Westinghouse will have our complete support in every way necessary to secure a just settlement.

APPENDIX B

COMMITTEE ON COLLECTIVE BARGAINING
1126 Sixteenth Street, N.W.
Washington, D. C. 20036

Telephone: 296-1200, Ext. 265
Code 202

October 28, 1966

Memorandum
To: Members of Steering Committee
From: David Lasser, Chairman

In order to plan our future activities, I am suggesting a meeting of the Steering Committee to be held Friday, November 18, 1966, at 10:00 A.M. At this time we might review our experiences and discuss a number of activities that might be undertaken.

Among these are the following:

1. Continued publication of "Unity" on a monthly basis so that we can keep exchanging information and experiences.

2. A campaign to help the southern and rural locals to get wage increases. The fact that we failed to get inequity adjustments in our contract does not prevent locals from filing grievances over wage rates that are out of line, at least in the GE chain.

This question of wage differentials remains an open matter that ought to be settled through our coordinated activities.

3. What kind of structure we should maintain during this period. For example: Should we maintain the same sub-committees as we have before and having them keep working, getting material for future use?

There might be other matters you wish to suggest.

I believe it would be very helpful to all if each of us submits copies of the contracts that have been signed so that all Unions will have copies of our agreements.

This we might arrange to do at the meeting of the Steering Committee.

Appreciate hearing from you with regard to the meeting. Cordial best wishes.

APPENDIX C

The changes made by the 1966-1969 IUE-GE National Agreement signed October 26, 1966, have not yet been incorporated in a document containing an integration of the new provisions with the former provisions. The 1966-1969 contract made no changes in Article XXI and provided for only the following changes in Articles XIII, XIV and XV:

Article XIII Grievance Procedure

Section 2(c) Change third paragraph to read as follows:

> "When the Union requests an emergency meeting on a particular grievance or grievances, such a meeting shall take place within one week after the Company receives the request for such an emergency meeting."

Article XIV Strikes and Lockouts

Section 1 Delete "or if the matter is submitted to arbitration as provided in Article XV", and insert in its place "the foregoing exceptions will not apply if (a) the matter is submitted to arbitration as provided in Article XV, or (b) 12 months shall have elapsed after receipt by the Union of the Company's final decision on the grievance at Step Three."

Article XV Arbitration

Section 3(a) Remove William Gomberg and Joseph Brandschain from list of contract arbitrators.

Delete last two sentences of second paragraph of Section 3(a).

Delete all but the first sentence of the third paragraph of Section 3(a).

Delete the word "alternates" in the listing of arbitrators in Section 3(a) and add the following names:

James Altieri
Lewis M. Gill
Clarence Updegraff
Saul Wallen

Section 5 Substitute the following for Section 5:

The powers of an arbitrator shall include the authority to render a final and binding decision with respect to any dispute brought before him including the right to modify or reduce or rescind any disciplinary action taken by the Company but excluding the right to amend, modify or alter the terms of this Agreement, or any local understanding.

The expense of the arbitration will be borne equally by both parties.

Individuals who are covered by this Agreement do not have the right to invoke the arbitration procedure on their own initiative. The arbitration procedure can only be invoked by the Company on its behalf or the Union on behalf of the employees.

Section 8 Change: "1963" to "1966"

APPENDIX D

GENERAL ELECTRIC COMPANY
570 Lexington Avenue, New York 22, N.Y.
Telephone PLaza 1-1311
Management Development and
Employee Relations Services

April 10, 1962

Mr. John H. Callahan, Chairman
National Conference Board of the IUE (AFL-CIO)
504 State Street
Schenectady, New York

Dear Mr. Callahan:

We have been thoughtfully considering your request for resumption of periodic meetings between representatives of the Company and the National Negotiating Committee of the IUE-GE Conference Board for the purpose of improving our relations climate.

We are mindful that some constructive relations have been achieved in the past when the discussions have been used for exchanging views of a general nature or to clear the air of misunderstandings about the intentions of both parties in exploring problems of mutual interest. Therefore, we are more than willing to join with you in another try at such meetings providing it is clearly understood that they are not to be utilized, or misconstrued, as a substitute for the regular grievance procedure under our contract, or as premature negotiations on contractual matters which are closed until August, 1963. As you know, when attempts have been made to turn prior meetings to such purposes, the results have been detrimental to sound relations.

Perhaps the best way to start is for you to send us your ideas for the agenda of the first meeting, and as soon as

we are in agreement on the items to be discussed, we can set a date to suit our mutual convenience.

Very truly yours,

/s/ P. D. Moore
PHILIP D. MOORE, Manager
Employee Relations Service

cc: James B. Carey

APPENDIX E

April 26, 1962

Mr. Philip D. Moore, Manager
Union Relations Services
General Electric Company
570 Lexington Avenue
New York 22, New York

Dear Mr. Moore:

This is in reply to your letter of April 10, 1962, on your request for resumption of periodic meetings for the Conference Board and your group.

At a meeting of our National Negotiating Committee held in Schenectady April 24th, we discussed your letter and have come up with the following suggested agenda,

1. Problems of automation (as you know, this was once a topic of discussion in previous meetings but the Company never came up with any of their findings).
2. Problems of Farming out of work.
3. Job Security.
4. Syracuse questionnaire. (copy enclosed)
5. Uniform status of stewards. (Mr. Ritter is familiar with this problem).
6. Worcester plant shutdown and the Pittsfield move to Scranton. Also, the retraining program that is outlined in my letter dated April 26, 1962.

leave of absence for union officers. This is handled by the Company in a discriminatory manner and should be corrected.

This meeting should be arranged at a mutual date so that our committee could be notified in advance to make the necessary hotel accommodations.

Very truly yours,

John H. Callahan, Chairman
GE-IUE-AFL-CIO Conference Board

JHC:r
encl:

APPENDIX F

IUE-GE NEGOTIATING COMMITTEE MEETING WITH GENERAL ELECTRIC COMPANY

General Electric Company
New York, New York
May 29, 1962

Present for the Union: Robertson, Brimer, Onion, Lawalin, Evans, McManus, Bristow, Binns, Fiorillo, Callahan, Lasser, LaCasse, McQueeney, Sigal, O'Neil.

Present for the Company: P. D. Moore, J. R. Baldwin, G. E. Dwyer, F. E. Highton, T. F. Hilbert, A. J. Kelley, E. J. Kneeland, W. R. Reed, J. A. Reid, E. J. Ritter, E. S. Willis, R. E. Zook, R. Shaw.

Moore: Reminds the committee the contract is not open. Job Security is something I like to see on the agenda. Discussion on this will swerve a useful purpose.

Lasser: I'd like to respond in the spirit of your remarks and would like to direct my remarks to this question of

Job Security. Experts seem to think that we can expect a recession in 1963. Would like to look ahead to see what problems we might be facing in this area. Suggest we take a look at experience, i.e., expenditures on Income Extension Aid—SUB—training program.

Moore: We have only started to get together on figures on Extension Aid. We don't have any form yet.

Lasser: We can use the form we took in 1958, etc.

Moore: We can get that. We have spent considerable sums on that.

Lasser: This might not be true because the expenditures might have taken other forms. (Cites the Steel Industry experience with Human Relations Committee). What statistics would be needed for collective bargaining, etc.? Try to anticipate problems and to see what we can do here.

Moore: We have watched this to and we think it behooves both parties to do the Human Relations problem independently. The story I get is that they have been somewhat less productive than anticipated.

Lasser: Let's raise this question of Automation. The Company agreed that they would look into the matter and nothing has been done. (Cites Kennedy's press conference statements on automation on April 14). We do feel there are some problems on this in G.E. For example, sales increased by 21% while jobs decreased by 17, while engineers increased—which means that the unemployment has increased more. We suggest that committee be set up to determine what has been done, to provide both of us with information. Take 4 or 5 key places and use them as a basis for discussion.

Moore: We went through this in 1960 and we find that you can't lay too much at the doorstep of automation. We were at a loss to identify the impact of automation in specific jobs. We suggest that we will continue to look at the number of jobs and have them for 1963. We found that automation was not a great influential factor as to

what happened to a number of jobs. We are in the business of automation.

Lasser: We are all for it, but we want to look. If we had a study made—could we get the cooperation of the company?

Moore: I don't follow you.

Moore: I think you should be free to make what studies you want to make, but as far as turning over company records to you—that's something else.

Lasser: For example—if we send someone to Tell City to get information—could we expect your cooperation?

Moore: I'm sure our people there would cooperate with Jim Lawalin. We have a behavioral survey going on now, but we have to evaluate its technique.

Lasser: Refers to Syracuse questionnaire. On what basis is your weekly earnings based?

Moore: We just take a wild shot and it's not supported.

Lasser: What about the cost of $80.00?

Willis: It's just a guess.

Lasser: You ought to look your figures over based on your annual earnings—the figure would be much higher—about the $190.00 a year, what is that based on?

Moore: If it's 3% you can use the figures back.

Lasser: That's well over $3.00 an hour. Is it an average? Would you let me know what your conclusions are?

Moore: Later on we will let you know.

Sigal: On the matter of Income Extension Aid—you said you will supply us with figures.

Moore: You can expect that we will have something for you on this.

Sigal: I was thinking of something more specific. Willis cited some figures. Company spent 1 million on Income Extension Aid and the money applied to the Income Extention Aid.

Willis: Yes, for the 9 month period.

Sigal: The figure does not reveal how many people were laid off—and there is no way to tell how you collect your

figures. I suggest that the current information be broken down to show how this works. It would be important to know how long people were laid off and how the payments were made. Would there be a problem in providing us with that information?

Moore: I think your assumption is incorrect. I wouldn't expect to broaden the thing out to get transcendental information.

Sigal: If only one out of a hundred who are laid off do get the aid or one out of five.

Willis: We don't have the information you are talking about.

Sigal: The article does show that you know how much you spend. You can determine by the number of people laid off and what you spend. You did give us the information, but we are not getting it now. I assume you do collect the information and it would be much more useful if we can get it periodically rather than a lump sum.

Moore: We will look into that.

Sigal: Our information is also that at the end of 1961—your statement was let each side get its own information. This information can be helpful as you go along. We don't kid ourselves that we can get it as good as you can.

Moore: We do send you matter on Insurance and Pensions. We will look into it.

Sigal: The question here is how do changes in production methods change employment. There is still this question—are you suggesting that this is unobtainable?

Moore: I don't think you can all the changes. It's too complex. The guy who is laid off or rehired—there may be no change in production methods. I don't think we can define what jobs are effected on this basis.

Sigal: We do think that the question of determining what is happening is important. I am sure you are always looking to see what the causes are for what is happening. Is there any reason why this can't be made available?

Moore: I don't think there is any information available. Let's speculate on this. I'm willing to do that.

Sigal: I am sure you are interested in easing the impact on the employees. It's true that retraining doesn't produce jobs. But, to know what is happening is the important. You won't be giving anything away by letting us know what these changes are. I'm sure there are situations where the examples are clear.

Moore: I will reassure you that we will call to your attention—some of these things are less foreign competition and retraining.

Callahan: Isn't it true if you were called upon by the President of United States, that you would get this information?

Moore: That's pretty broad, but if we had it we would get it.

Callahan: Didn't the Presidents committee come to certain conclusions?

Moore: We concluded on these items in 1960.

Callahan: We ought to try to improve our relationship, but most of it should come from your side. Mr. Lawalin is authorized to act on problems dealing with Pension and Insurance. Management letter on mailing list.

Moore: We have no outside mailings, but let us know which one you are interested in.

Callahan: What about the other subjects on farming out of work?

Moore: There has been no change in 1960.

Callahan: It's a continuing problem.

Moore: This farm out is a local problem—it should be resolved at the local level. It's a general problem.

Sigal: You mean after it's done? Do you have any policy of discussing it at the local level before it's done and what is done about it. What information do the local managements supply to the Union—as to what its intention is and after it has been done. In what areas can we tell our locals that we can say can be discussed with you?

Moore: Our local management is in continual discussion with local union people.

Moore: Isn't it possible to have some area that we can say that you can expect management will discuss this action?

Hilbert: We can't apply some rule of thumb.

Sigal: Take for example—contracting out some particular operation.

Moore: I just unaware that this is some great problem.

Callahan: Take for example—Welding, farming out. Do you notify the Union or the grounds crew?

Moore: I think it's a wise idea to let the Union know ahead of time, but I don't know whether this being done. I'm unaware where this is being done.

Sigal; Can you give us some example where it was done?

Moore: Yes, the restaurants business in Pittsfield.

Sigal: When?

Moore: 1954-55.

Zook: Very recently we told them in Pittsfield we were farming out the FRAM units.

Callahan: You don't have any problem where there is plenty of work.

Sigal: The point is simply providing the opportunity to discuss the matter. It's the problem of easing the impact on loss of jobs. Can we make a start on providing some systematic method of analyzing the problem?

Callahan: We gave you the Scranton example of the Scranton.

Moore: We gave you our answer on that too.

Sigal: We read the letter and it was completely unilluminating. The guy who lost the job don't understand it.

Dwyer: The Union in Pittsfield were told before the move was made. Are you suggesting that we should discuss with you how it should be handled?

Sigal: Nothing of the sort. I am saying that the company just said "we decided to make the move" and that was that.

Callahan: Is there any other context under which we can take these matters up? You made the move then you called me up. You changed your mind on Scranton.

Hilbert: That shows we are flexible.

McManus: Cites the LU Lynn plant—where people are available for the work in question. In Pittsfield we understood that it was a gyro type of work and we should have been considered.

Moore: Coordiner did announce to each group executive to find some work that could go to Scranton. Your meetings with Ed Parker shows that you were not at a loss to discuss this problem at your location.

Sigal: Is there any reason why these considerations could not be given to the Union? Can't you consider that this is an axiom that it wants to protect employment.

Callahan: How about letting secret work going to a communist union?

Moore: We went over that bush many times. We have good employees in all our locations. We get a lot of subcontracting work—in such as Schenectady. We remain very sensitive to this.

Sigal: What do you consider significant?

Moore: That's up to the local people.

Signal: We are talking about attitude.

Moore: We already expressed that in 1960.

Callahan: Ritter's letter of May 7. Can you explain the letter?

Ritter: Under the procedure we have been following in arbitration—John sends a letter that states the grievance is attached and based on the relief requested is the basis for our position—there is an arbitrable question. Goldman tells us we should take advantage of Article XV 2(b).

Sigal: I have a different understanding and according to my information, the question was not whether or not there was a price in dispute. The arbitration clause is explicit. "The grievance attached does raise an arbitrable issue." You say that you can say that you can.

Hilbert: The purpose of XV 2(b) is to screen out any issue that does raise an arbitrable issue.

Sigal: In the letter you go far beyond the point in that you make. If in fact the grievance does raise an arbitrable issue—you have no right to invoke XV 2(b). If in fact an arbitrator does make a decision over something that he has no power to then you have remedy. You understand that you can change the contract by writing in a letter.

Ritter: You ought to read the record because there are some statements you might not back up.

Sigal: I'm sure your objections to arbitration as a whole is not fair in that it appears you don't want to make the arbitration clause work.

Moore: This arbitration thing is moving in a fast area—like Warrier & Gulf. We have to take steps to protect the interpretation of our contract.

Sigal: What's intended is written here. You are just trying to set forth that the contract is not as narrow as it should be.

Hilbert: That's what we agreed to.

Sigal: Where does it say that?

Hilbert: (Reads contract).

Sigal: Where does it say you can narrow the contract like the discharges?

AFTERNOON SESSION

Sigal: Payment of Income Extension Aid payment as bar of unemployment compensation.

Willis: It would not result in anyone being denied in Alabama.

Sigal: She got no payment the first year. The second year she got a lump sum. Referee held that while she got wages, it was not wages earned during the qualifying period. He held she couldn't collect. GE took position that this was wages earning during period worked. Prior to her layoff.

Willis: That's the basis for keeping the record clean. They can't be used as new wages. You can't use it as wages the first year—then you can't use it as wages the second year.

Sigal: This is a question of qualification for period for which wages are earned. In this case, the issue was whether the claimant had earned wages during the previous year.

Willis: If she had taken the 60 day option—she would have been disqualified. They can't serve two opposite rulings.

Sigal: Proportionately, how many people got the lump sum after 60 days?

Willis: About half—about 800 all over the chain.

Callahan: How many in Schenectady?

Willis: I don't know, but there were quite a few.

Callahan: Is there any way of getting the figure? How many in the IUE plants?

Willis: We just have the over-all figures.

Callahan: It's part of the contract with IUE.

Moore: One of the reasons we don't have figures on this is because the unemployment features didn't come in to play until later. We are getting the figures together now.

Sigal: You mean in all these cases they are getting unemployment compensation?

Willis: Yes. No one has been disqualified. A lot of them are waiting for the 39 weeks.

Sigal: What happens when you guess wrong on the option?

Moore: He repays.

Sigal: When he loses his recall rights?

Company: If after having going through recall?

Sigal: But he took your word. He acted on what turned out to be inaccurate information.

Callahan: If we write you a letter—if we ask for information plant by plant, as to the people who collect on people who are being paid who go to school, etc.,—if they are so fantastic they should be kept secret.

Joe Egan: I don't know of anyone who called in a lump sum and I know of two who are getting paid for schooling.

Onion: No lump sum payments made in Ft. Wayne.

Moore: I'd be interested in what you see in 6 months as far as the work situation.

LaCasse: We have three in Pittsfield for school. Nineteen collected U.C. after 39 weeks and I collected in lump sum.

Callahan: We like to know about the locals involved in the employment.

Moore: Do we have any situations on lay off?

Sigal: You would be in a better position to tell us about that.

Callahan: Suggests meetings like this on a quarterly basis.

Moore: I'm receptive to both your suggestions—maybe we can get a better impression of what would be useful to discuss.

Sigal: You do get your figures on a plant by plant basis?

Moore: Depends on where the payroll is.

Callahan suggested a questionnaire to our own people on this.

Status of Stewards.

Moore: Aren't these matters of local handling. What is your preference?

Callahan: If a steward loses his super-seniority status, the longer service employee should be restored. What would be the lawyers version?

Hilbert: He wouldn't be entitled to be restored according to the contract.

Sigal: If A is a steward and loses his super-seniority—what would be the basis for his super-seniority protection? How do you justify this?

Hilbert: Because the contract was drawn with the thought in mind of the key situation at the time of the stewards status.

Sigal: What is the basis for giving protection to as steward?

Hilbert: This is one of your clauses you asked for. The Union varies its interpretation.

Moore: I take it your preference is that when he loses his seniority status he shall lose his status. Write us a letter on it.

Callahan: I will. Worcester plant shut down. Is there any way we can persuade you to change your mind?

Baldwin: This is a consolidation of a single manufacturing department. It's purely on an economic standpoint. We expect to be able to offer Worcester employees jobs at Ashland. We are currently in negotiations with Union at Ashland with respect to the seniority status at Ashland and we are optimistic.

Binns: We are presently trying to negotiate seniority.

Baldwin: We are in negotiations now at Ashland on this.

Callahan: We can't do anything to change your minds in Worcester?

Moore: Any persuasive means they did in Scranton was in the wrong direction. Whatever they did wasn't persuasive on us at all.

Hilbert: I think you should look on this as an opportunity.

McManus: How many people would be affected in Worcester.

Baldwin: We expect to offer 85-90% jobs in Ashland.

Callahan: Employees refusing to go to Ashland will they be eligible to collect Income Extension Aid?

Baldwin: Yes, if the employees refused they will be collected.

Callahan: No matter where they live?

Baldwin: That's correct.

Callahan: This is a plant closing?

Baldwin: It's a consolidation of the two plants in Ashland.

Callahan: If people are going to refuse to go to Ashland —will they be entitled to termination pay?

Baldwin: They will according to Income Extension Aid.

Sigal: What is your position on unemployment compen-

sation payment—if an employee refuses to take a job offered in Ashland?

Baldwin: We will not protest it.

Callahan: You said 507 in Ashland as of March 29—and 800 people will be offered jobs or 95%.

Sigal: Over what period of time will the people be employed at Ashland?

Baldwin: In about 6 weeks time—by the first of April of next year.

Sigal: What is your projection for employment for the immediate future?

Moore: It looks as thought it is going to be as steady as it has been.

Sigal: For the next year?

Moore: Yes, fairly steady. It has been fairly steady for other businesses, amazingly so.

Sigal: In so far as the plants where we are located—do you see any fluctuations?

Moore: We have the E.R. managers from Lynn, Schenectady, Pittsfield and Baldwin can fill in in Louisville.

Baldwin: Syracuse—Clock and , the business outlook looks excellent for the next year.

Dwyer: Cleveland—all at this point look fairly steady. Roanoke—looks pretty good.

We have a new business. Long range picture looks promising. Tell City and Anniston—receiving tube business is gradual declining. Business at this point is looking better than in a long time because of two competitors —Philco and RCA going out of business. Projection over the next year—it looks pretty steady.

Salary people are betting that in six months, they will close the plant.

Dwyer: There is no intention at this point of closing the Anniston plant.

Baldwin: Our market results are better in Trenton and Tyler.

Dwyer: What I said about Cleveland applies to the other lamp divisions.

Zook: Lynn, Bridgeport, Fort Wayne and Philadelphia. There are no changes in employment level contemplated in the next several months. No reduction contemplated. Bridgeport and Fort Wayne are up 350 over what they have been. Overall I am not aware of any major reductions. The outlook in the small motor plants look very satisfactory.

Ried: Pittsfield—employment is creeping up slowly and steady. The overall employment picture looks good. In Schenectady—we have 600 more people in the bargaining unit than last year. 40-50 people returning every month. Prospects look good there.

Sigal: You indicated that you were dismayed about Lasser's comments about the economy.

Highton: There is no direct relationship to the stock market and the general business outlook. The effect of stock market is connected very seriously of controls in the light of squeeze of Kennedy's action in steel. The condition of excess of exports over imports has changed last five years—will question that reduction of exports will have effect of design cost of products. Management is more concerned with lowering tariffs here—will have greater impact on job opportunities. Challenge our trying to bargain tariff rates down. Whole area of foreign competition should be looked up to a given product than just a given plant. Technology of a given product, cost, etc. Labor should concern itself with competition with other countries. Depreciation allowances. Over the next 6 months or year, don't see where stock market condition will effect employment. Psychology is important factor.

Sigal: Affirmatively what is your projection for the economy as a whole?

Highton: We ought to be rising gradually for the next six months or a year. Even Kennedy is looking at what our economy here is, as to the common market.

Sigal: You suggested that if there was a relief on taxes you expect a slowing down.

Highton: Encouraging thing now is the sharp turn in Home starts and Auto sales.

Sigal: In suggesting this meeting you expressed a desirability of a more constructive relationship.

Moore: Carey suggested that we ought to get together on these quarterly meetings. We ought to get more specific things on the table for the next meeting.

Sigal: Is there anything you have in mind to suggest?

Moore: Nothing at this time.

Sigal: At one location a letter was sent to the Louisville local a month ago about a new policy in Louisville. April 19, 1962 letter to Mr. Bristow. What is new in the portion relative to stewards and Union officials?

Moore: This is always been in the picture.

Baldwin: It was over a culmination of a series of work stoppages. There is no action under this as yet. The intention was to create an acute knowledge of the contract violation. The stoppage created a situation on the pipe lines where a thousand people would be affected.

Sigal: You are going further by saying that the Union has to take practicable action. We don't know what it means. You recognize that the Union does not have an obligation to take a practicable action. This goes to everybody—not just Union members. You won't give the Union any leverage any control over employees. Yet you impose responsibility on the Union without giving the Union their recognition. It's unfair to say to the Union you have responsibility over all employees whether they belong to the Union or not. Unilateral imposing this obligation on the Union. You have no right to do this. This is no way to start getting good relationships off the ground.

Moore: When you get to a situation where you have specifics we can see then whether we are right.

Sigal: I don't see why we can't get this matter cleared up now before we get into more trouble.

Baldwin: It was discussed before it went into the mail.

Bristow: It was announced then it was discussed.

Hilbert: This is standard policy upheld by the board.

Sigal: I challenge that statement. Can you give us an example in our plants?

Hilbert: In Syracuse in 1956-1957.

Sigal: I am talking about the "practicable action."

Hilbert: I am talking about the responsibility of the steward in the contract.

Moore: Don't you agree that there won't be illegal work stoppages?

Sigal: There is nothing in the contract which says there will be no illegal work stoppages.

Hilbert: The contract says unauthorized or sanctioned.

Sigal: Where is such duty imposed by the contract?

Egan: Both sides ought to get to the core of the problem.

Bristow: Cites files of GE daily publications. Doesn't make for good publications.

Moore: Let me assure you that we didn't come to this table with an anti-Union feeling. We had some clippings from the newspapers on Mr. Carey's statements, but we won't go into that now.

Callahan: Union officials—leave of absence. Leave of absence is discriminatory against Dick Evans, as compared to other locations.

Moore: We acknowledge your remarks.

Meeting adjourned at 4:20 p.m.

APPENDIX G

Pittsfield General Electric News, June 8, 1962

MEETING BETWEEN COMPANY AND UNION COVERS WIDE RANGE OF TOPICS

The May 28 meeting between representatives of the Company and the IUE covered a wide range of topics—from automation to responsibilities of union officials in cases of illegal work stoppages.

IUE officials from several plant locations and representatives of the union's national headquarters heard Philip D.

Moore—manager of the Employee Relations Service, express the hope that this kind of session would be constructive, focusing on building better mutual understanding in basic areas rather than substituting for a grievance meeting or constituting any early start to contract negotiations.

David Lasser, IUE research director, led off the discussion by expressing concern about the future prospects for employment in the national economy and in General Electric. Lasser said that the union expects that 1963 will see a recession, with a consequent increase in unemployment.

Lasser then turned to what he termed the widespread public concern with the effect of automation on employment security. He suggested, along the lines of the IUE's 1960 negotiating demands, that the union and General Electric might form a national level "Joint Committee" to study the effect of automation on employment in General Electric and that similar committees could be set up at the plant level.

Moore replied that the Company was continuing to study the effects of automation along with all other factors affecting employment, and said there was to date little evidence that automation had accounted for a loss in jobs in General Electric. On the contrary, Moore pointed out, automation has created many General Electric jobs, because the Company is a major manufacturer of automation equipment. Moore added that he felt that "automation" had been overemphasized as a threat to employment opportunities in the economy as a whole.

To this, IUE attorney Benjamin Sigal replied that the IUE was really interested in any changes in production methods that affected employment, and thus, that we should not let the difficulty in defining "automation" stand in the way of thorough study.

Moore assured him that General Electric was continuing its year-round study of all of the factors that affect employment and unemployment and suggested that the union conduct independent studies on this subject, too.

Still on the general subject of employment security, IUE representatives asked for data on benefits paid to date under the Income Extension Plan, and indicated some dissatisfaction that more employees had not received benefits under the Plan. In reply, Moore pointed out that great numbers of employees had not drawn benefits under the Plan was a good sign that employment had been relatively stable in the Company over the past year.

Sigal then moved to the subject of arbitration, suggesting that General Electric did not seem to be trying to make the arbitration clause in the contract work, because the Company has objected to IUE requests for arbitration on certain types of grievances.

Moore replied that the Company was objecting to arbitration only in specific cases where the grievance was outside the scope contemplated by the arbitration clause in the National Agreement, which was intended to make a relatively narrow range of grievances subject to arbitration. Company counsel Thomas F. Hilbert added that General Electric is seeking only to administer the National Agreement in the light of the intent of both the Company and the union when the agreement was negotiated. Our specific objections, he said, are intended to preclude broadening the contract beyond the point that the parties contemplated at the time of negotiation.

Moore added that arbitration has become a broader problem primarily because of recent court decisions which give arbitrators new authority to operate in many areas not originally contemplated in agreement. This, in effect, creates a situation in which negotiated agreements become distorted when they are subject to change by arbitrators who were not parties to the negotiations.

The final subject discussed during the day was a protest raised by Mr. Sigal that General Electric was not fostering sound relationships with the IUE in one plant location by sending letters to employees and to local IUE officials stating that employees who took part in illegal work stop-

pages would be subject to disciplinary action, and that local union officials would also be disciplined if they fail to take practicable action to halt an illegal work stoppage.

Sigal took the unusual position that IUE officials had "no affirmative obligation" to try to halt "wildcat" strikes which the union did not start, and that it wasn't right for the Company to seek to hold IUE officials responsible for halting such stoppages. He explained that not all employees represented by the union were members of the union, and that local officials had no power over non-members.

Pointing out that the matter of membership or non-membership was irrelevant, and that in any event it was unlikely that only non-members were engaging in work stoppages, Hilbert cited the National Agreement provisions stating that the union and its officials agree not to authorize or sanction, directly or indirectly, work stoppages in violation of the Agreement.

John Callahan, Chairman of the IUE's General Electric Conference Board, suggested that subsequent meetings should be held on a regular quarterly basis. Moore replied that he thought the meeting had been constructive, that subsequent meetings might be held periodically, although not necessarily quarterly, and that the next meeting might be scheduled for September.

APPENDIX H

IUE-GE NEGOTIATING COMMITTEE MEETING WITH GENERAL ELECTRIC COMPANY

570 Lexington Avenue
New York N.Y.
December 12, 1962

Present for the Union: John H. Callahan, Frank Fiorillo, Dave Lasser, Ben Sigal, Joseph LaCasse, Joseph Egan, Richard Evans, Fred Prater, Art Gwinell, Art LaBlue, Hugh McManus, Leroy Johnson, John Stanley.

Present for the Company: J. R. Baldwin, E. W. Bickford, G. E. Dwyer, F. E. Highton, T. F. Hilbert, A. J. Kelley, E. J. Kneeland, J. A. Nunn, W. K. Reid, W. K. Reed, E. J. Ritter, E. S. Willis, R. E. Zook, Phil Moore.

Discussion on Anniston, Ala. plant closing

Dwyer: Listed reasons for the plant closing

1. Competition

2. Impact of imports on volume business; 479 million in 1955; reduced to 76 million in 1961; decrease of 21%. Estimate for the next 5 years will be down 275 million or 42% off. Competition from Japan and Netherlands growing since 1955. Every manufacturer is facing the same problem; Philco, CBS Hytron is now out of business; Sylvania is now out of the business and RCA is closing their plants. We had choice of in reviewing the situation to consolidate operations and using the most feasible thereby retaining jobs for 5-6 thousand people. The latter choice was best in our judgment; closing the Anniston plant because it was the least feasible to be maintained. Reasons: Geographical

location, proximity to other locations, proximity to headquarters. Therefore Anniston was the logical location to close. This does not mean we are announcing that we are closing the plant, but not for the manufacture of tubes. We are prepared for other aspects; 1. cost picture of operations and 2. employees relations picture. These are the things considered by other managers who might need more plant space. We are also trying to market the plant to other outside GE manufacturers. Last week a Company from Illinois or Indiana was looking over the plant. We are trying to hedge on this by trying to find a place for our employees. Most folks that have skills in Anniston can be placed but the unskilled and semi-skilled will have trouble. The schedule for phasing out the plant will begin after the first of the year and will take 6 months or more to complete The Income Extension Aid will be applicable.

One more point. Anniston has a reputation which is unfortunate because of the 1960 strike. We have difficulty in overcoming that. We are trying to emphasize that with that one exception relations have been very good.

Callahan: Reads from newspaper clipping item about new GE plant opening in Huntsville and Gainsville, Fla.

Baldwin: These are connected with the N.A.S.A. program.

Lasser: Are people in Anniston offered jobs in Huntsville?

Callahan: Only to non Union people?

Lasser: There seems to be some confusion. You tell us that there is no production work involved and we are told by the newspapers and our Local that people are offered production jobs.

Moore: Only that we are trying to help people get jobs. There are no production jobs there. It's more of a Development and Research kind of thing.

Prater: They told us that they have production jobs there.

Moore: We will check into that.

Reed: The Gainsville announcement was made long before the announcement of the Anniston plant closing.

Lasser: How far along is the Gainsville facilities progressed?

Reid: They broke ground about 3 months ago.

Lasser: When will it be completed?

Reid: In about 3 months.

Lasser: If you are in such a hurry why couldn't you use the Anniston facility?

Reid: Gainsville has been designed for a specific facility.

Lasser: I have the impression that the decision to close Anniston was taken into account over a long period.

Moore: Property for the Gainsville plant was acquired in 1957.

Reid: The products made are highly technical batteries.

Callahan: What type of people are you employing?

Reid: Mainly people with high engineering ability.

Moore: The Anniston plant was reviewed very carefully.

Prater: We had a report from high authority that the Company would not turn the plant over.

Dwyer: That is completely erroneous.

Callahan: The Owensboro plant is hiring new people and some machines have gone to Tell City.

Lasser: How much of the Tube market does GE have?

Moore: We don't know.

Callahan: Are you the leader?

Lasser: How much of the production was made in Anniston?

Moore: We don't know.

Lasser: What will the order of phasing out be?

Dwyer: About 1/6 or 10% a month.

Lasser: What will the total force be?

Dwyer: About 250 to 300 production employees.

Lasser: Less production in total.

Dwyer: Yes, difference will be in full utilization of present engineers.

Lasser: What do you see in prospective future?

Moore: Optomistic in the next 10 years. Consolidation will make it a better competitive product.

Prater: Shrinkage in Anniston has been less than in Owensboro and Tell City.

Dwyer: We have been happy with the productivity of employees in Anniston. We are not leaving Anniston because of the productivity of the employees in Anniston.

Stanley: Objects to references to the strike in Anniston and the reference to the bad employees in Anniston, made by the Company.

Callahan: Refers to the editorial in the Anniston newspapers regarding the comments made about the strike and the bad employees.

Prater: I work in Anniston. What "hoodlums" are you referring to?

Company: (No answer).

Lasser: Are you going to treat Anniston as a Closed plant?

Dwyer: For the purposes of Income Extension Aid this is a plant closing.

Lasser: Are the people obligated to stay until you release them?

Dwyer: Yes, if they are released earlier we will bend over backwards.

Callahan: Has anyone been paid yet?

Dwyer: There are some one layoff now with less than 12 months or less service.

Lasser: Assuming that Prater's statement is correct that the Company wants women in Huntsville isn't there something wrong with your statement that in phasing out the Anniston plant on availability.

Moore: We haven't established that yet.

Lasser: Why couldn't that production work be done in Anniston?

Moore: It has to be done on the site. We will check the facts. But its not a production kind of thing in Huntsville.

Callahan: Senators Sparkman and Hill have expressed concern over your announcement to close the Anniston plant.

Moore: We are most concerned.

Lasser: The decision on this was made months ago.

Moore: That's an assumption.

Prater: They said that 5 years ago.

Moore: We didn't say that we were closing the plant down. We said the decision had not been made.

Lasser: Your decision couldn't have been made in the last 2 months.

Moore: As long as the handwriting was on the wall we did consider it.

Lasser: You just couldn't have made the decision just 2 months ago. With all the managerial know how at your disposal, computers, planning experts and etc., you could have made better plans to replace the product in Anniston.

Moore: This was done. We could see a trend.

Lasser: When do you expect to come to a final decision as to when you will definitely know whether you will stay or not?

Dwyer: We don't know.

Lasser: It seems rediculous that you didn't dovetail your plans better.

Callahan: Did you put a brochure out?

Dwyer: Yes.

Egan: As of now are you optomistic in keeping the plant open?

Dwyer: It doesn't look promising, but it may change.

McManus: How great is GE interests in foreign tube manufacturing?

Moore: Little or no interest in Tube.

Lasser: I understand that its going up to 10 to 12%.

Moore: Yes, about that.

Lasser: Is Toshiba one of the exporters.

Dwyer: Yes.

Lasser: Didn't you furnish them with drawings, patents, and cross leasing agreements?

Moore: They were the same as Carey's proposals.

Lasser: You have the best know how in engineering in space ships and missiles and diamond making, but when it comes to taking care of 600 people in weighing human values you seem to go into confusion.

Moore: We did give all the consideration possible.

Lasser: You make an infinite number of products. You could use your ability to make plans in Anniston with another product.

Moore: We have considered all ways to make an announcement of this type but any way we make it we get criticized.

Prater: What about people who have to stand in line in Owensboro and Tell City.

Moore: Our policy hasn't changed in that regard. We do not have a prohibition on hiring rights. Employees don't go with a machine. He can go on a job opening.

Prater: Would employees from Anniston be given consideration over a new employee?

Moore: If he has skills and background experience.

Sigal: You say you don't discriminate against employees in GE. What are you doing with supervisors?

Callahan: Three foremen went to Huntsville.

Dwyer: Some did, Yes.

Sigal: You didn't tell them they would have to get in line.

Moore: The hourly employees have been told that there are employment opportunities in Huntsville.

Lawalin: In Tell City they could be integrated because we make the same product.

Dwyer: There is no reason an employee from Anniston can't file an application for employment in Tell City. He would be considered based on his qualifications.

Callahan: You are giving employment to your foreman.

Sigal: You have the greatest concern for your machines,

but none on human resources. Have you asked your employees if they want to move if there are so many jobs in Owensboro and Tell City?

Dwyer: We don't know.

Prater: You do know when the machines are going to Owensboro and Tell City.

Johnson: Did you offer the E. Boston employees jobs in Memphis. We couldn't even question as to what precisely was offered.

Dwyer: A sizeable Number moved to Euclid Lamp and other places.

Lasser: Are you going to make an offer to the Anniston people?

Dwyer: We haven't reached that point yet.

Hilbert: This subject was fully discussed in 1960.

Callahan: Is this why you won't do it. We are talking about Anniston.

Hilbert: I'm just saying that this is Company policy.

Sigal: When the patient dies then there is no further problems with him any more. We are asking you to make some reasonable provision for these people. We don't represent the machinery. Maybe we would be better off if we did.

Moore: We talked about this in 1960.

Sigal: We now have a joint and mutual problem.

Callahan: Why don't you integrate like you did in Worcester.

Dwyer: We haven't got to that point yet.

(Morning session ended at about 12:15 P.M.)

Afternoon session started at about 2:00 P.M.

Discussion on Income Extension Aid

Lasser: Asked for information requested in the Letter of October 14.

Moore: (Distributed figures to members of the Committee).

This will bring you up to date for the first and second quarter of 1962.

Lasser: When will the information be available by location?

Willis: These are GE Totals.

Lasser: What happened to the people in Scranton, Pa.

Dwyer: Some are on layoff; Few are recalled.

Lasser: What are the number of employees now?

Willis: There are 175,000 employees with 3 years or more of service.

Lasser: What is responsible for the sharp drop off (referring to the figures on the sheet Moore passed out) for tuition?

Moore: Steady employment. Number of layoffs are 15% of what they were in 1961.

Lasser: Why are there so few people requesting training (8)?

Company:

Moore: We are surprised that more people don't want to learn.

Lasser: That's not so. Your figures indicate that an examination is needed as to why people don't take advantage of the training program.

Willis: We did check. We asked the question if people really understood the program. The response was yes.

DISCUSSION ON ARBITRATION

Moore: If the trend of the IUE is to seek to abrogate the Agreement with Arbitration and if this persists then in 1963 we are going to have the goddamndest wrestling match on the Arbitration clauses you ever heard of.

Callahan: On grievances you invoke the rule, even after court decisions have been rendered you still invoke the rule.

Sigal: What areas are we allegedly abusing.

Moore: You are seeking to broaden the contract in the areas of discipline and discharge cases.

Sigal: It seems to me that GE has to carry the burden of proof. The fact is that you have been raising the question of broadening the Contract. We don't think that we

have violated any understandings. It was our loss when you succeeded in imposing an arbitration clause which don't exist anywhere except in Westinghouse which puts the burden on the Union requiring a court order to get you to arbitrate. The fact is there is no burden on you. The burden is on the Union. The Company doesn't lose a thing. What is it that you have been obliged to do that is so burdensome?

Moore: You put the item on the agenda.

Sigal: You have admitted there was a problem some months ago. You have a gripe. We have a gripe. You just now threatened us by saying that you will take us to the mat in 1963. Now lets put the problem on the table.

Moore: I'm not going to get involved in that kind of conversation with you. You said that you had the problem.

Sigal: In order for us to get arbitration we have to go to court in the majority of cases.

Hilbert: In some grievances that are joined with some we think are not arbitrable.

Sigal: Let's not waste time. I'm not here to exchange witticisms and barbs. Let's state the problem. You have refused to arbitrate the majority of cases and requiring us to go to court requiring us to go to court compelling arbitration. What is there we can do to correct the situation?

Sigal: If there is a willingness on both sides to do something about it we can start right now. You said that we are going to have a big wrestling match. We don't agree that we are violating any agreement. The agreement that is written and signed is the only document. Why are you raising this hullaboo that we are violating the agreement? Why do we have to go to court to compell arbitration? Are you interested in doing something about it?

Moore: Since Warrior and Gulf Arbitrators have taken a different view and IUE and others are trying to take advantage of the situation as to what was or not arbitrable. If the trend continues to broaden the understandings then

we have to get an understanding as to what we understood. At the moment we are talking about what we see is a developing trend.

Sigal: What we understood is written down in an Agreement. You ought to explain what you mean by what you said that the law has affected what is arbitrable. The only change that has occurred is the approach as to what is the grey or doubtful areas.

Moore: The question is what is and is not arbitrable under the contract.

Sigal: That is specifically expressed in the Contract.

Moore: Our contract says that subcontracting is not arbitrable.

Sigal: Where does it say that subcontracting is not arbitrable in the Contract? You wrote the language. You set forth the Areas where Arbitration can't make an award. You say that because we are asking to arbitrate cases in which you say are not arbitrable. How many cases have you been actually taken into court?

Moore: It isn't your success that's bothering me, but your efforts are. Your requests for arbitration have increased 4 or 5 fold.

Sigal: The whole basis of arbitration is to avoid strikes. You are saying that we are abusing our rights if we want to get a question or issue resolved. When you consider the number of units we have our average is much smaller.

Hilbert: There are two sensitive areas;

1. IUE is taking advantage of the supreme court decisions.

2. In 1955 understanding on no arbitration as Article 1 and subcontracting.

3. Upgradings not arbitrable until 1954 (Shell case)

Sigal: We always argued that the arbitration clause was too vague over the years. We wouldn't have taken all the pains we did in changing the arbitration clause.

Hilbert: In 1955 we operated on a more trustworthy basis.

Sigal: The parties expected that in 1955 that the Union expected the Company to challenge some cases because you expected this would happen and now we are doing what you expected and then you say we are violating the agreement.

Now as to the specific subjects as to what would not be arbitrated—that we agreed to. Let us know in specific terms what it is that's bothering you, so that we know and make it possible to arrive at an agreement instead of making threats of a great big wrestling match.

Moore: Let me think about it. We will be in touch with you.

The Meeting ended about 5:00 P.M.

APPENDIX I

IUE-GE NEGOTIATING COMMITTEE MEETING WITH GENERAL ELECTRIC COMPANY

February 26, 1964
New York, New York

Present for the Union: Callahan, Fiorillo, Jandreau, McManus, Egan, Hayden, Evans, Lawalin, Rock, Rivard, Santerre, LaCasse, Johnson.

Present for the Company: Moore, Ritter, Bickford, Luker, Hilbert, Kelly, Reed, Baldwin, Ried, Highton, Nunn, Kneeland, Herreman, Willis.

Ritter: Moore will be late because of train schedules.

Callahan: Complaints on Vacation Schedules. (Reads article on Berkshire Eagle) (January 20, 1964).

LaCasse: Moore stated that it was not the intent to use the vacations as they are now doing.

Ritter: You have what is in the blue book.

Callahan: LaCasse is not alone.

Ritter: After the committee agreed to this now we get all this. We should not be subject to attack.

Ried: In Pittsfield we have three different situations. Power Transformer, 3 weeks shut down; 88% of people entitled to 3 weeks or more; 55% entitled to 4 weeks or more. They felt it was physically impossible to operate effectively. Other vacations will be at the discretion of employees with approval of management. I don't think Pittsfield is suffering 80% have 3 weeks; 60% have 4 weeks. We got letters of protest from employees complaining about scheduling of vacations so we tried to accommodate.

Egan: In those departments where you always had a 2 week vacation shut down—was the change to 3 weeks because of the business or the contract change?

Ried: Because of the business.

Egan: How about those who will be using personal time?

Ried: 55% in power transformer will get the extra 4th week.

LaCasse: You gave the impression that shutdowns always were 2 weeks and this practice would continue.

Ritter: A previous arbitration award prevented people from varying from the contract language and this is why we proposed the changes.

Ried: The more time you have off in the interests of business, we want to maintain or gain on our share of the market.

Egan: We still have a shut down this year and now management in Philadelphia is saying that all vacations must be over by September.

Moore came into the meeting at 10:45 a.m.

Moore: When we started this vacation plan we knew that we would have problems. Let's see what they are.

Callahan: Again reads from Berkshire Eagle. Permitting employees more flexible use of vacation time.

Ritter: It is more flexible.

McManus: There is no question that people had the impression that the vacation would be more flexible.

Evans: We have one location with a four week shutdown. Some employees will be able to use the option because of the new additions to the contract.

Moore: We all have to recognize that vacation shutdowns will get longer as time goes on.

Jandreau: In Schenectady every department has a different schedule. We expected longer shut downs and more than one, but for the first time they are saying at the end of the year there will be a shut down. We can show there is more overtime. We say people are entitled to take time off. The complaint we have is the selection of the shut down. This has never happened before. I'm not convinced that this has anything to do with business. An employee can end up with an extra week off. I question whether the shut down is for business requirements.

Ritter: This goes to the point of the arbitration case we had with another Union with the extra vacation time before and after the vacation shut down.

Egan: You ought to do a better planning job.

Ritter: The customer has a lot to say about it.

Lawalin: You said we got what's in the blue book. We always had options in Tell City. This year we have a schedule posted—2 weeks shut down in July and one in December. This year they list it as two shut downs as such.

Moore: What they are saying is that the third week is the planned shut down. We didn't have the intention of having the shut down split, but we did say we might have a 3 or 4 week shut down. I'll talk to the folks in Tell City about it.

Ried: We have no problems where the Locals have worked out agreements on when the scheduled shut down would occur.

Evans: The big thing with us is the incidental absences and this has a great appeal.

Moore: Because it's new we did anticipate having some problems with this. Especially with the unemployment compensation aspect of the problem.

Ried: If we scheduled the last week of the year just out of sheer nastiness—I agree with you that it would be wrong.

Moore: We would like to get together again on this vacation problem to talk some more about it to see what other problems we run into.

Callahan: We'd like to know why you refuse to hear a grievance here at the third level—Fitchburg.

Moore: That case was solved across the grievance table. Fiorillo agreed to the settlement.

Callahan: How can you make a settlement. (Reads letter to Ritter). I think there is something fishy about the whole thing. It seems very strange to schedule the meeting.

Ritter: What was your report?

Rivard: While we were meeting with the Company, the Company handed out checks.

Moore: When we started these meetings, we understood that we would not discuss grievances. I think it's out of order.

Callahan: If you refuse to meet with us on this grievance, we will have to file a charge against you.

Rivard: Could I read your daily headliners?

Moore: No.

Callahan: Why didn't you tell us you refuse to discuss this case?

Moore: Do you have another subject?

Rivard: Started to read.

Moore: If you do, you will jeopardize the period meetings.

Ritter: There are people here who are not on the Negotiating Committee.

Callahan: At least you should have the decency to let us know that you wouldn't want to discuss this.

Ritter: I told you that I wouldn't discuss this grievance officially, but I will talk to you about it.

Callahan: What day do you want to meet?

Rivard: You ought to be fair and hear what we have to say about it.

Ritter: The 4th at 2:00 P.M.

Callahan: Employment Security.

Several times we wrote to you on the problems of automation.

Moore: I remember past discussions on having a committee to review the impact on automation.

Jandreau: There are a lot of facts on the increase or decrease in forces. In Schenectady the employment has decreased 900 a year since 1957. This has caused an increase in output in machines you are investing in more modern machinery. New machines coming in displacing several old machines—like the planner miller in the Turbine Department. We have people displaced with these skills in their late 50's and can't be placed anywhere. We do feel it and the record shows it that new technology has caused 900 people a year to be displaced.

Moore: What's the alternate course of action. Should we not improve machines.

Jandreau: The official Union position is not to oppose improvements. Automation should be a blessing and not a curse.

Moore: What's the solution?

Jandreau: I don't have the solution if you don't, but we ought to jointly try to find one.

Moore: We did provide for improvements in the contract.

Jandreau: We could talk about the shorter work week.

Moore: It may occur to you that certain businesses were under the umbrella of anti-trust suits and before you start laying all the problems.

Egan: You are not laying that at our door step.

Moore: There is always the problems of cost.

Fiorillo: What about the joint committee on automation?

Moore: No, we went around the bush on that one.

Egan: We see the effects of the computer on the Salaried jobs. What do we do with these people?

Moore: We'll do what we did in Pittsfield. Make sure we don't hire people so we don't have to lay them off. What's the solution?

Egan: You go around the country?

Moore: We don't want to hire, whether we need them or not.

Jandreau: Wirtz came up with figures on employment. There is no difference in G.E. Putting people on Government payrolls is not the answer. Even Snyder said his job is to put people out of work.

Moore: He is just pro-labor.

Jandreau: He is pro-concience.

Moore: We went all over this joint committee thing and don't see any need for it. What are you going to get out of it?

Jandreau: What are you doing about it?

Moore: Our employment is increasing in the Company (hourly people).

Callahan: Is it true in Pittsfield you are not hiring any more apprentices?

Moore: It varies every year.

Recessed for lunch at 12:20 p.m.

Meeting resumed at 2:20 p.m.

Lawalin: Questions on Insurance. Won't you explain credit balance approach to Exclusion K. How it applies to both plants.

Moore: Any credit balance that accrues on a particular bill can be applied to other payments to subsequent illness within that year.

Lawalin: The question of applying the deductibles. The 10 year restriction any time during 10 years could be wiped out. What is the basic reason for 10 year limitation?

Continuity of service. An employee out beyond a year—does it apply to those already out at the time the agreement was signed.

Willis: Credit Balance—distributes Exclusion K calculation and explains data on page 17—page 18.

Lawalin: This is for a given claimant.

Willis: It would be for each person. On the front page.

Lawalin: How would you apply a case where you had extended benefits?

Willis: You have 513 left on Basic in Tell City.

2	Linton
9	Philadelphia
16	KAPL
11	LMG
16	LST
31	Burlington
5	Foundry—Schenectady
2	SAE—Lynn
3	Waterford
Total—734	237 dropped at end of of year

We don't know whether these are all hourly or not.

Jandreau: Do you agree that they have worked out the IEA as described in the IUE News.

Willis: Yes.

McManus: The agreement is that the new plan would work the same as the old Relief and Loan plan.

Willis: Yes.

Lawalin: Whether people who go out on retirement—why they have the 10 year restrictions.

Willis: It's in the cards they signed and we got out a news release on it. We put in the 10 year restriction because we felt people were contributing to the overall plan. We found cases where people would come in the plan at the last minute. In order to give everyone an equal break, we felt that we had to keep the same restriction.

Jandreau: When the change in Exclusion K came in some people jumped at the premium saving without realiz-

ing that they would lose out at the end. We had the 10—15 year requirement since 1948. When people reach 55 in most cases they are contacted to make sure they are in. This is in the manual. Relations manual news release date October 1, 1963.

If you have any case where it looks like a legitimate error, let's take a look at it.

Egan: How many Pensioners took the additional $3,000.00?

Willis: About 95%. We have changed the date to February 28, 1964, because of the 1000 or so that came in late—18,000 applications.

Local managements have just distributed the Un. Rep. plan. Two years ago we were using 3% assumption. Now—it is 4% after. It was approved last week—we found we could reduce the payment to 1.8 back to 1963 January 1. There are about 30 Unions participating.

Callahan: A lot of Unions are not participating.

Lawalin: On Continuity of Service application to people who were out when contract was signed.

Willis: We said we would change the 3 years to 5 years. Anyone who comes back before September 30, he will get the 5 year. If she comes back say within 18 months, she would be automatically placed on the recall list.

McManus: An employee returning from service and signed up November 1961, with dependents coverage. She was pregnant at the time which made her ineligible for coverage. She sent in bills for medical depression.

Lawalin: Reimbursement agreement. Why is it necessary before you pay?

Willis: To be sure we can collect on negligence claims. We have used that for 4 years.

Callahan: Lost time for Stewards.

Moore: We found no changes had been made on the 20th in our report. We made it damn clear to these guys that they should do something about it.

Egan: I have been talking to Toner about this. You want to talk about the time the Stewards don't use. That's not the problem. We have Stewards who use up more time.

Moore: They are free in the face of evidence to do what they should to improve.

Rivard: Company is trying to take away what we already have. Locally, management says that if we call the meeting, we will pay.

Moore: Our Consultant is out sick—we will look into that situation.

Ritter: Is this the place where they have two additional members?

Rivard: They have the problem in Fitchburg where management is trying to reduce the time by pooling what's not used up.

Moore: That was not the basis for our thinking in negotiations. We didn't intend to pool.

Ried: We have problems where people want to spend 8 hours a week whether they have grievances or not.

Egan: What locals don't have grievances?

McManus: We do have the question up in Lynn. Lot of lost time is coming from pieceworkers and excessive lost time is charged to the Union, because of your new pricing policies.

Moore: They are free to charge if they are convinced.

Jandreau: Do we negotiate for the whole works in Schenectady, or do we have to negotiate with 17 different departments. Can I negotiate this with Mr. Stevens or Levy?

Moore: You should talk to Mr. Stevens and Levy.

Callahan: Scheduling of third step grievances.

Bridgeport—Dues check off cards. You refused to accept the check off cards.

Moore: We haven't heard about it. Will check into it.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 645

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GENERAL ELECTRIC COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY MEMORANDUM OF THE REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

We reply here to respondent's suggestion (memorandum in opposition, pp. 11–12) that the petition for a writ of certiorari should be denied as moot because a new collective-bargaining agreement, effective for three years, has now been signed.

1. The duty to bargain collectively does not terminate with the signing of a collective-bargaining agreement. The duty remains in force, not only with respect to matters not resolved in the agreement, but with respect to disputes over the terms and mean-

288-186—66

ing of the agreement. *Conley* v. *Gibson,* 355 U.S. 41, 46. Both aspects are present here. Important questions relating to wage differences are not covered in the new agreement and apparently are to be resolved in future negotiations.[1] And since the agreement contains only a limited arbitration clause,[2] major disputes under the agreement will also be left for negotiation.

In these negotiations the union will doubtless reassert its right to use a negotiating committee which includes members of other unions and the company will doubtless persist in refusing to negotiate with such a committee. The result will be a bargaining impasse that could result in a strike. We cannot agree, therefore, that the injunction (Pet. 67) is a dead letter or the case moot. *Labor Board* v. *Local 74, Carpenters,* 341 U.S. 707, 715.

2. We grant that the case has lost the urgency that moved us to apply to this Court for a stay of the court of appeals' judgment. We point out, however, that the signing of the new agreement does not detract from the importance of the question presented in our petition—namely, what standards should guide the district courts in the issuance of Section 10(j) injunctions.

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[1] See Appendix, *infra*, pp. 5–6 (memorandum convening meeting of union steering committee to plan further negotiations with respondent).

[2] See R. 493a, Bd. Exh. 3, pp. 51–63 (clause in previous agreement, carried over into new agreement without substantial modification).

3. Should this Court agree with respondent that the case is moot, the proper course would be, not to deny the petition, as respondent urges, but to grant the petition and remand with directions that the judgments of the court of appeals and of the district court be vacated. *United States* v. *Munsingwear,* 340 U.S. 36, 39–40; see *Mechling Barge Lines* v. *United States,* 368 U.S. 324.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

NOVEMBER 1966.

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APPENDIX

COMMITTEE ON COLLECTIVE BARGAINING,
1126 Sixteenth Street, N.W.,
Washington, D.C. 20036,
October 28, 1966.

Memorandum
To: Members of Steering Committee.
From: David Lasser, Chairman.

In order to plan our future activities, I am suggesting a meeting of the Steering Committee to be held Friday, November 18, 1966, at 10:00 A.M. At this time we might review our experiences and discuss a number of activities that might be undertaken.

Among these are the following:

1. Continued publication of "Unity" on a monthly basis so that we can keep exchanging information and experiences.

2. A campaign to help the southern and rural locals to get wage increases. The fact that we failed to get inequity adjustments in our contract does not prevent locals from filing grievances over wage rates that are out of line, at least in the GE chain.

This question of wage differentials remains an open matter that ought to be settled through our coordinated activities.

3. What kind of structure we should maintain during this period. For example: Should we maintain the same sub-committees as we have

before and having them keep working, getting material for future use?

There might be other matters you wish to suggest.

I believe it would be very helpful to all if each of us submits copies of the contracts that have been signed so that all Unions will have copies of our agreements.

This we might arrange to do at the meeting of the Steering Committee.

Appreciate hearing from you with regard to the meeting.

Cordial best wishes.

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Office-Supreme Court, U.S.
FILED
DEC 15 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 774

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—v.—

GENERAL ELECTRIC COMPANY and IVAN C. McLEOD, Regional Director of the Second Region of the National Labor Relations Board.

MEMORANDUM OF GENERAL ELECTRIC COMPANY IN OPPOSITION

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Of Counsel

December 1966.

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IN THE

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INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—v.—

GENERAL ELECTRIC COMPANY and IVAN C. McLEOD, Regional Director of the Second Region of the National Labor Relations Board.

MEMORANDUM OF GENERAL ELECTRIC COMPANY IN OPPOSITION

Statement of the Case

Preliminary Statement

The petition of International Union of Electrical, Radio and Machine Workers, AFL-CIO (the "IUE" or the "Union"), is the second petition for certiorari in this proceeding, the first having been filed by the Solicitor General on October 7, 1966 (No. 645, O. T. 1966; the "Solicitor's Petition"). We will not repeat the arguments set forth in our Memorandum in Opposition in No. 645, all of which are applicable here, but respectfully refer this Court to

that Memorandum for our discussion, *inter alia,* of the underlying facts, the issue as presented to the courts below, and the opinions below.

This Memorandum will be limited to a response to the attempt by the IUE, whose very right to be a party in this proceeding is doubtful,* to lend the appearance of signifi-

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* The granting of intervenor status to the IUE resulted from its *ex parte* motion to the Court of Appeals. The IUE did not seek intervention in the District Court but, instead sought and was granted limited rights of "participation" in that Court. Counsel for IUE recognized that such limited "participation" did not make IUE "a party, giving me access to the appellate processes of the Court." (S.M. 24-25).

Although we do not believe the question to be of sufficient importance to warrant our filing of a certiorari petition, since IUE is admittedly trying merely to proliferate the issues raised in the Solicitor's Petition (Pet. p. 10), we consider it appropriate to point out that the right of IUE to intervene herein is highly questionable and entails undesirable consequences.

One highly undesirable result flowing from the charging parties' intervention in a Section 10(j) proceeding is highlighted in the instant case, in which a stay was granted at the request of the Solicitor General on condition that he file a petition for certiorari by October 24, 1966. That condition was in effect circumvented by the Union's filing of its own petition on November 15, 1966. Since, as we were advised by the Clerk of the Court, both petitions will be submitted jointly to the Court after the time to respond to IUE's petition has elapsed, the filing of the IUE petition effectively nullified the intent of the Justice granting the stay to assure that a request for review, if any, would be expedited.

In any event, it has been held that the charging party has no right to intervene in a proceeding under §10(j) of the Act, 29 U. S. C. §160(j), because such a proceeding results from a discretionary administrative determination without any right by the charging party to limit such discretion. *Reynolds* v. *Marlene Industries Corp.*, 250 F. Supp. 722 (S. D. N. Y. 1966); *Penello* v. *Burlington Industries,* —— F. Supp. ——, 54 LRRM 2165 (W. D. Va. 1963); see *Clothing Workers* v. *Richman Bros.*, 348 U. S. 511, 517 (1955). The Board has consistently supported this position, as it did here (S.M. 29).

This conclusion is supported by the language of Section 10(1) of the Act, 29 U. S. C. §160(1), which *requires* the Board to seek injunctive relief in certain specified situations. In that Section Congress provided that the charging party "be given an op-

cance and complexity to a case that is basically simple and essentially moot.

Questions Presented

As pointed out in our Memorandum in No. 645 (pp. 7-8), the position of the Government with regard to the criteria governing Section 10(j) proceedings changed as this case progressed to this Court, and the issue of whether equitable relief is "just and proper" * was somehow transformed into the issue of whether "the impact on the public interest will be substantial if relief is withheld" (Solicitor's Petition, p. 2).

Even this shift in position by the Government, however, does not satisfy the IUE. Instead, in an admitted effort further to expand the issues (Pet. p. 10), it seeks to recast the issue raised by the first criterion from the question of "reasonable cause to believe" that a violation of the Act has been committed, to one that not even the Board has suggested, i.e., "a reasonable *possibility*, that the Board's complaint will ultimately be sustained" (Pet. Questions 1-3, pp. 2-3).

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portunity to appear by counsel and present any relevant testimony." No such right was given in a Section 10(j) proceeding. Nor does this Court's decision in *Auto Workers* v. *Scofield* and *Auto Workers* v. *Fafnir Bearing Co.*, 382 U. S. 205 (1965) require a different result. Those cases arose under Section 10(f) of the Act, 29 U. S. C. §160(f) which grants persons aggrieved by a "final order of the Board" the right to participate in the review of that final order. Here, however, there has been neither full hearing nor a "final order" of the Board; but merely an administrative determination to proceed under Section 10(j).

* Section 10(j); and see the Labor Board's memoranda to the courts below quoted in our Memorandum in Opposition in No. 645 (p. 7).

In addition, the IUE would have this Court review factual findings (Question 3) and statements by the Court below which were not the basis of its determination herein (Question 4). Such matters clearly do not warrant review. See *infra*, pp. 12 to 14.

From the foregoing it would seem that the "conglomeration" attributed by the IUE to the Court of Appeals (Pet. p. 9) is more aptly descriptive of the attempt of the IUE Petition to compound the issues herein and of its "concern" that the Solicitor General has not "adequately" presented the issues (Pet. p. 10).

We believe the only questions presented by this petition are those presented at page 8 of our Memorandum in Opposition in No. 645 and should be answered as suggested there.*

As indicated above, we will limit our discussion primarily to facts arising subsequent to the Solicitor's Petition which further manifest the mootness of this proceeding and to matters particularly applicable to the IUE Petition.

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* We do not consider it appropriate in this Memorandum to respond to IUE's assertions with regard to the underlying controversy to be tried by the Labor Board and its citation of authority in support thereof (Pet. pp. 6-7, 13, 17-19). We note only that the basic legal question on which the claimed violation depended, as indicated by the Court of Appeals, "is a difficult one to resolve and one which no court has considered." It is in a developing field of law wherein the precedent nearest to the case at bar is a Labor Board decision which is about to be but has not yet been reviewed by the Court of Appeals for the Sixth Circuit (*American Radiator & Standard Sanitary Corp.*, 155 NLRB No. 69, 60 LRRM 1385 [1965]). The novelty of the question is attested by the close interest of the labor bar in the ultimate resolution of the *American Radiator* case (1966 *Report of the Section of Labor Relations Law of the American Bar Ass'n*, p. 422).

ARGUMENT

I

This case has become moot.

On October 14, 1966, the Company and the Union's Negotiating Committee jointly announced agreement on a new contract to succeed the contract which expired on October 2, 1966. This agreement successfully concluded the negotiations which were the subject of this proceeding (Petition under Section 10(j), par. 4; 11a). On October 16, 1966, the Union formally ratified the settlement. Thereafter a formal agreement was prepared and signed on October 28, thus concluding national contract negotiations until October 26, 1969.

The Solicitor admits that "the case has lost the urgency that moved us to apply to this Court for a stay of the court of appeals' judgment" (Solicitor's Reply in No. 645, p. 2). He and the IUE assert, however, in their replies in case No. 645,* that the execution of the contract is not sufficient to render this case moot, because there is an asserted continuing obligation to bargain with regard to matters which allegedly have not been fully resolved by the negotiated collective bargaining agreement.

The controlling consideration relied upon by the Board and the IUE, and which moved the District Court to issue the injunction, was to compel the Company to remain at

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* Without having been named a party to the Solicitor's Petition, or in any other way making its appearance previously known to the Company, the IUE submitted a "Reply" to the Solicitor's petition relating to the Company's assertion that the case is moot.

the bargaining table in order to reach the agreement which was successfully concluded on October 14, 1966. Thus:

(1) The Board in its Brief on Appeal to the Court of Appeals stated (pp. 37-38):

> "As the record shows, unless the parties begin negotiations, it is likely that a strike by the approximately 80,000 people represented by IUE will occur. . . . It is equally reasonable to anticipate that the consequences resulting from such a strike would have a serious impact upon the various communities in which General Electric has plants or other facilities and upon the national defense."

(2) The IUE in its Brief to the Court of Appeals stated (p. 55):

> "On the other hand, the failure to grant the relief requested is fraught with danger to the public interest, and could . . . enhance the possibility of a strike if no negotiations take place between now and the expiration of the current agreement."

(3) Finally, it was the threat of a Company-wide strike purportedly resulting from the possibility that negotiations would not take place with regard to the contract which expired on October 2, 1966, which served as a basis for the District Court injunction (676a, 683a).

The preliminary injunction order must be read in the context of the opinion of the District Court. *Radio Station WOW, Inc.* v. *Johnson,* 326 U. S. 120, 130 (1945). *Cf.* Rule 52(a) F. R. C. P. The "decree will not be expanded by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought . . ." *Terminal R. Assn.* v.

U. S., 266 U. S. 17, 29 (1924). In light of the emphasis placed by the Board, IUE and the District Court on the need for an injunction to bring about negotiations for a renewal of the contract which expired on October 2, the execution of such a contract plainly fulfilled the purpose of this preliminary proceeding. (See authorities cited in our Memorandum in Opposition in No. 645, pp. 11-12.)

II

The issues sought to be raised by the IUE do not merit review by this Court.

In our Memorandum in No. 645 we demonstrated that this case never presented any question requiring or calling for review by this Court (pp. 12-16).

In its first two questions, IUE asserts that the sole test for a Section 10(j) injunction is whether there is a "reasonable possibility that the Board's complaint will ultimately be sustained" (Pet. pp. 2-3). If there is a possibility, argues the IUE, then "any continued violation of the law which deprives employees of their rights under the Act during the processing of a case by the Board, affords sufficient basis for the issuance of the injunction, without need to prove any additional impact on the public interest" (Pet. p. 10).

IUE thus with one stroke would (1) fundamentally alter the Board's latest suggested criterion of impact on the public interest; (2) eliminate the standard which the Board itself deemed appropriate in the petition to the District Court when it alleged that the acts complained of constituted "flagrant" unfair labor practices (13[a]); (3) disregard the public declarations of the Board and other authorities

(which even the IUE cites [Pet. pp. 21-22]) to the effect that Section 10(j) was intended to be used "not as a broad sword, but as a scalpel" in cases of "flagrant" acts and "wilful and calculated violations"*; (4) nullify the safeguards set forth in Section 10(j) of "just and proper"; (5) challenge the general principles governing Section 10(j) injunctions announced by the Court of Appeals for the Second Circuit almost ten years ago;** and (6) eradicate all consideration of the criteria traditionally considered by courts of equity in determining whether a preliminary injunction should issue (Pet. Question 3, p. 3).

The Norris-LaGuardia Act, 29 U. S. C. §101 *et seq.*, withdraws from the District Court's jurisdiction the power to grant injunctions in labor disputes except in strictly limited circumstances. In the original Wagner Act of 1935, the provisions of the Norris-LaGuardia Act were made inapplicable to certain Board proceedings (Section 10[h]). Section 10(j), however, was enacted in 1947 and in perhaps an abundance of caution, Congress restored therein the "jurisdiction" which was removed from the federal courts in the Norris-LaGuardia Act by providing that the courts

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* See Twenty-seventh Annual Report of the Board, p. 4 (1962); Statement of Frank W. McCulloch, Chairman of the National Labor Relations Board, *The National Labor Relations Board* in Action, before the Eighth Annual Joint Industrial Relations Conference, Michigan State University, April 19, 1962; Statement of Board Member Fanning, before the Ninth Annual Industrial Relations Conference of Electronic Industries Association, March 1962, and Report of Subcommittee on NLRB of the House Committee on Education and Labor, Administration of the Labor-Management Relations Act by the NLRB, 87th Cong., 1st Sess. (Committee Print, September 1961) which is quoted on pp. 21-22 of the IUE Petition.

** *Douds* v. *International Longshoremen's Association*, 241 F. 2d 278 (2d Cir., 1957).

"shall have *jurisdiction* to grant to the Board such temporary relief or restraining order as it deems *just and proper.*" (Emphasis supplied.)

The phrasing of §10(j) in terms of a jurisdictional grant clearly indicates that all that was intended was the empowering of the District Court to issue injunctions in certain limited types of labor disputes and that something more than a "reasonable possibility" of violation of the Act is needed before a Section 10(j) injunction can be issued. "A grant of *jurisdiction* to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances." *Hecht Company* v. *Bowles*, 321 U. S. 321, 329 (1943).

Indeed, the very use of the words "jurisdiction" and "just and proper" mandate the application of the general equitable principles which IUE (and the Board in No. 645) seek to avoid.

In *Brotherhood of Railroad Trainmen* v. *Chicago River R. Co.*, 353 U. S. 30 (1957), this Court held that in order to vindicate the processes of the Railway Labor Act, a strike by railroad employees over a "minor dispute" was subject to injunctive relief. Thereafter, in *Brotherhood of Locomotive Engineers* v. *M.-K.-T. R. Co.*, 363 U. S. 528 (1960), the issue arose as to "whether the injunction granted the Railroad may be qualified by conditions imposed by the District Court under traditional equitable considerations". This Court held that such considerations as preservation of a *status quo* and irreparable injury *must* be taken into consideration in determining the propriety of an injunction, stating (at 531-2):

> "If the District Court is free to exercise the typical powers of a court of equity, it has the power to impose

> conditions requiring maintenance of the *status quo*. Conditions of this nature traditionally may be made the price of relief when the injunctive powers of the court are invoked and the conditions are necessary to do justice between the parties. 'The award of an interlocutory injunction by courts of equity has never been regarded as strictly a matter of right, even though irreparable injury may otherwise result to the plaintiff. . . . [The court] will avoid . . . injury so far as may be, by attaching conditions to the award. . . .' Yakus v. United States, 321 U. S. 414, 440. '[I]t is the duty of a court of equity granting injunctive relief to do so upon conditions that will protect all . . . whose interests the injunction may affect.' Inland Steel Co. v. United States, 306 U. S. 153, 157. Since the power to condition relief is essential to ensure that extraordinary equitable remedies will not become the engines of injustice, it would require the clearest legislative direction to justify the truncation of that power.
>
> Such direction, if it exists, presumably must be derived from the Railway Labor Act itself, and since that Act contains no express provisions circumscribing the equitable powers of the court, such limitations, if any, must be created by clear implication."

This Court found no clear implication in the Railway Labor Act compelling the District Court to issue injunctions without regard to the equitable consideration which courts have traditionally taken into account, and there are no such express provision or clear implication in Section 10(j) which mandate the elimination of the courts' traditional role.

The irreconcilability of the principles expressed in the *M-K-T* case with the view of the law which IUE seeks to present for review here is readily apparent. There is no room under the doctrine of that case for reviewing now the decision of the Court of Appeals that the equitable considerations which had been held not controlling by the District Court must be considered and, when so considered, required the denial of the injunction.

See also, *United Railroad Workers* v. *Baltimore & O. R. Co.*, 364 U. S. 278 (1960); *Hecht Company* v. *Bowles*, 321 U. S. 321 (1943).

The attempt by IUE to analogize Section 10(j) to preliminary injunctions provided for in other federal acts is without substance. No such analogy exists. Thus, the preliminary injunction provided in the Civil Rights Act, 42 U. S. C. §1971(c), and that contained in the statute involved in *SEC* v. *Capital Gains Bureau*, 375 U. S. 180 (1963) (viz.: 15 U. S. C. §80b-9) both of which are heavily relied upon by IUE (Pet. pp. 10-14), are not issued preliminarily to any administrative determination. Under those acts, and others relied upon by the IUE, it is the court and not an administrative body which is entrusted to make both the first and the ultimate determination of illegality.

In addition statutes such as those involved in the *Capital Gains* case contain no limitation that an injunction is to be issued only where the court finds such issuance "just and proper" but, on the contrary, require only a "showing" that the prohibited act has or will be committed.

Finally, four of the statutes, relating to such matters as Fur and Wool Products Labeling, 15 U. S. C. 69g(b) (2), 15 U. S. C. §68(e), Textile Fiber Products Identification, 15 U. S. C. §70(f) and False Advertising, 15 U. S. C. §53,

specifically provide that injunctive relief is appropriate where it is in "the public interest" or in "the interest of the public".

Accordingly, not one of the 25 statutes relied upon by the IUE (Pet. App. A) has even a superficial resemblance to Section 10(j).

Moreover, the field of labor relations is quite distinguishable from other areas. Cf. *United Steel Workers of America* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, 578 (1960). Obviously, the acts sought to be analogized by IUE do not have the background of a Norris-LaGuardia Act which "explicitly formulated the 'public policy of the United States' in regard to the industrial conflict" and which must be read as a "harmonizing text" with other labor statutes. Cf. *United States* v. *Hutcheson*, 312 U. S. 219, 231 (1941). These statutes, therefore, present no reason for granting certiorari.*

We now turn to the two remaining questions for which the IUE seeks review.

Almost ten years ago the Court of Appeals for the Second Circuit laid down the general principles governing applications for Section 10(j) injunctions, viz.: "reasonable

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* Although, as we have demonstrated above, the statutes cited by the IUE are in no wise relevant to this case, we find it interesting that one of the page references to the legislative history of the Civil Rights Act upon which IUE relies (103 Cong. Rec. 5764) contains the following statement by Charles H. Slayman, Chief Counsel and Staff Director of the Senate Judiciary Subcommittee on Constitutional Rights:

> "(a) In an equity proceeding, the plaintiff, whether it be a private person or the Government, must satisfy the historical requisites for equity jurisdiction. He must show irreparable injury and the inadequacy of the remedy at law. The court has a much broader discretion to deny the requested relief than it has in actions at law."

cause to believe" and "just and proper". *Douds* v. *International Longshoremen's Association,* 241 F. 2d 278 (2d Cir. 1957). Without claiming that the principles of those cases were not applied herein, the Union's attempt to challenge those cases by suggesting that any claimed violation of the National Labor Relations Act as amended triggers and in effect compels a Section 10(j) injunction, if it has reasonable "possibility" of success, is plainly specious and raises no legitimate question for review. The Union's subsidiary effort to have this Court review whether the considerations of *status quo* and irreparable injury were properly weighed and assessed (answered in our Memorandum in Opposition in No. 645, pp. 13-15) runs afoul of this Court's long standing rule that it will "not grant a certiorari to review evidence and discuss specific facts". *United States* v. *Johnston,* 268 U. S. 220, 227 (1925).

Finally, the Union's fourth assertion (Pet. Question 4, p. 3) is answered in our Memorandum in Opposition in No. 645 (pp. 15-16). Moreover, it is clear from the opinion of the Court of Appeals that the expedition of proceedings before the Board was not relied upon as a *basis* for its reversal but as a response to the Board's bootstrap doctrine that a preliminary injunction should be issued because it failed to proceed with dispatch to an ultimate determination. Thus, the portion of the opinion of the court below wherein this matter was discussed succeeds that portion of the opinion holding that the District Court erred and is also prefaced by the sentence: "Nor are we moved to affirm the grant of an injunction because the Board's procedures may be slow and tortuous". This Court has consistently refused to grant certiorari to review such reasoning which is merely collateral and not the basis of the decision for which review is sought. *Tyrrell* v. *District of Columbia,* 243 U. S. 1, 5-6 (1917).

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 1966.

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